

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

ORIGINAL
76-1420

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

----- X
UNITED STATES OF AMERICA, :

Appellee, :

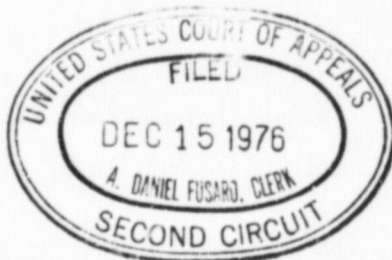
v. :

KENNETH RAYMOND CHIN, and ELIZABETH :
JANE YOUNG, now known as ELIZABETH :
JANE YOUNG CHIN, :

Defendants-Appellants. :
----- X

On appeal from the United States District
Court for the Eastern District of New York

APPELLANTS' JOINT APPENDIX



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PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

	<u>Page</u>
Docket Entries - Elizabeth Jane Young Chin	A-1
Docket Entries - Kenneth Raymond Chin	A-6
Notice of Appeal - Elizabeth Jane Young Chin	A-10
Notice of Appeal - Kenneth Raymond Chin	A-11
Affidavit of Neal Findley for Search Warrant, sworn to October 3, 1975	A-12
Supplemental Affidavit of Neal Findley for Search Warrant, sworn to October 3, 1975	A-15
Search Warrant	A-19
Indictment	A-21
Affidavit of Eleanor Jackson Piel, sworn to January 8, 1976, in Support of Motion to Suppress	A-24
Portion of Affidavit of Neal Findley, sworn to January 28, 1976, in Response to the Affidavit of Eleanor Jackson Piel sworn to January 8, 1976	A-29
Superseding Indictment	A-31
Memorandum of Decision and Order Denying Motion to Suppress	A-36
Memorandum of Decision and Order Denying Motion to Dismiss Superseding Indictment	A-42
Judgment and Probation Order - Elizabeth Jane Young Chin..	A-48
Judgment and Probation Order - Kenneth Raymond Chin	A-50
Government's Exhibit 6 in Evidence: Firearms Transaction Record, E.J. Young	A-52
Government's Exhibit 33 - Application for Firearms Permit, E. J. Young	A-54
Requests to Charge - Elizabeth Jane Young Chin	A-55
Excerpts from Attachments to Request 14	A-57
Judge Mishler's Charge and Exceptions	A-58

DOCKET ENTRIES **ELIZABETH JANE YOUNG CHIN**

U.S. DISTRICT COURT - CRIMINAL DOCKET		Case Filed	Yr.	Docket No.	Def.
Felony <input type="checkbox"/> JUDGE/Assigned Trial Offense <input type="checkbox"/> MAGISTRATE 0712 U.S. Code Section 18-371, 922(a)(3)	U.S. vs. YOUNG, ELIZABETH JANE now known as ELIZABETH JANE YOUNG	11/11/75	75	851	2
District Office 207-1 U.S. Attorney/Asst. Gavin Scotti	Defendant Defense: ELEANOR JACKSON PIEL 36 W. 44th St. New York, NY 10036 682-8288	No. of Defendants 2 Bail \$ 25 Date 10/16/75	MISHLER CASE NO. 75 M 1743 Bail Release <input type="checkbox"/> Personal Recog. <input type="checkbox"/> Unsecured Bond <input type="checkbox"/> Conditional Release <input type="checkbox"/> 10% Deposit <input type="checkbox"/> Surety Bond <input type="checkbox"/> Collateral <input type="checkbox"/> 3rd Party <input type="checkbox"/> Custody <input type="checkbox"/> PSA (See Docket)		
ARREST: 10/6/75 or U.S. Custody Began on Above Charges High Risk Detn. & Date Designated <input type="checkbox"/> Prosecution Deferred <input type="checkbox"/>	INDICTMENT: 11-11-75 Information <input type="checkbox"/> Waived <input type="checkbox"/> Superseding Indictment <input checked="" type="checkbox"/>	ARRAIGNMENT: 11-20-75 Trial Set For 4/12/76 1st Plea <input checked="" type="checkbox"/> Not Guilty 2nd Plea <input checked="" type="checkbox"/> Not Guilty 3rd Plea <input checked="" type="checkbox"/> Not Guilty	TRIAL: 4/12/76 Trial Began <input checked="" type="checkbox"/> 4/12/76 Trial Ended <input checked="" type="checkbox"/> 4/12/76	SENTENCE: Disposition 11-1-76 <input type="checkbox"/> On All Charges <input type="checkbox"/> On Lesser Offenses <input type="checkbox"/> Accrued <input type="checkbox"/> Dismissed <input type="checkbox"/> Noted/Discontinued	
Search Warrant: Issued <input type="checkbox"/> Return <input type="checkbox"/> Summons: Issued <input type="checkbox"/> Served <input type="checkbox"/> Arrest Warrant: <input type="checkbox"/>	COMPLAINT: 10/6/75 VAC/070A OFFENSE (in Complaint): Conspiracy to violate Gun Control Act of 1968. T-18 USC Section 922(a)(3) and (6) and Section 371.	PRELIMINARY EXAMINATION OR REMOVAL HEARING: Date Scheduled 10/16/75 <input type="checkbox"/> Waived <input checked="" type="checkbox"/> Intervening Indictment	OUTCOME: <input type="checkbox"/> Dismissed <input type="checkbox"/> Exonerated <input type="checkbox"/> Held for District CJ <input type="checkbox"/> To Transfer District <input checked="" type="checkbox"/> Held to Answer to U.S. District Court AT: EDNY Magistrate's Initials: VAC/070A	BOND: <input type="checkbox"/> Exonerated <input type="checkbox"/> To Transfer District	

CHIN 1		V. Excludable Delay			
DATE	PROCEEDINGS	(a)	(b)	(c)	(d)
10/6/75	William Liebovitz, Esq. (Ret) 51 East 42nd Street NY 10017 AUSA - Gavin Scotti.				
10-8-75	Bail reduced to \$10,000 10% Cash - Hearing Adjourned to 10-28-75 at 2:00 PM - MS 070B - Bail made - Deft released.				
10/26/75	Case adjourned to November 12, 1975 at 2:00 PM.				
11/11/75	Indictment Filed. See 75 CR 851. (Before Costantino J)				
11-20-75	Notice of Appearance filed.				
11-20-75	Before BRAMWELL, J - case called - deft & counsel present - deft arraigned and after being advised of her rights and on her own behalf enters a plea of not guilty - bail conditions contd - Dec. 19, 1975 for all motions and to set a trial date.				
12/12/75	Notice of motion to inspect, and to suppress filed ret. 12/19/75				
12/19/75	Before MISHLER, CH. J. - Case called - Defn's motion to inspect serial affidavits, etc. argued - Decision reserved. Adj to 4/12/76 for trial				
12/22/75	Certificate of engagement filed - trial set for 4/12/76				
1-12-76	Second Memorandum of Law filed in support of deft Young's motion for complete disclosure, and to suppress the fruits of an illegal search, etc.				
1-12-76	Notice of Motion filed for severance etc.				

OPPOSITE THE APPLICABLE DOCKET ENTRIES IN SECTION IV SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC § 3161(f) - "SPEEDY TRIAL ACT".

Docket Entries - Elizabeth Jane Young Chin

A-2

DATE	IN PROCEEDINGS (continued)	V. EXCLUDABLE DELAY
1/26/76	Letter from Judge Mishler, granting extension to 1/29/76 to file answering affidavits filed	
1-29-76	Affidavit of Neil Findley filed.	
1-29-76	Letter dated Jan. 28, 1976 filed to Chief Judge Mishler from Edward Korman, Chief Asst. U.S. Atty.	
2/9/76	Reply memorandum filed	
2-20-76	Letter filed dated 2-18-76 received from Chambers and ret'd as directed.	
2/23/76	By MISHLER, CH. J. - Memorandum of Decision and Order filed denying motion to suppress	
3-17-76	Govts Notice of Readiness for Trial filed	
4/9/76	Notice of motion for disclosure of list of all prosecutions brought pursuant to T-18, U.S.C. Sec. 922(a)(3), etc.	
4-12-76	Before MISHLER, CH J - case called - deft & atty present - On motion of deft Young the caption is amended to read Kenneth Raymond Chin and Elizabeth Jane Young Chin now known as Elizabeth Jane Young Chin. Mistrial Trial ordered and begun as to deft Elizabeth Jane Young Chin - Jurors selected and sworn - severance motion granted as to deft Kenneth Raymond Chin. Trial cont'd to 4-13-76	
4-13-76	Before MISHLER, CH J - case called - deft & counsel Eleanor Jackson Piel present - trial resumed - Motion by the deft for Judgment of Acquittal is denied - trial cont'd to 4-14-76	
4/14/76	Before MISHLER, CH. J. - case called - deft and counsel present - trial resumed - deft rests - motion to dismiss denied - trial trial cont'd to 4/15/76 at 10:00 A.M.	
4/15/76	Before MISHLER, CH. J. - Case called - deft and counsel present - trial resumed - jury retires for deliberation jury ret'd and rendered a verdict of not guilty on count 1 and asked to suspend for day and return tomorrow for further deliberations on count 2 - trial cont'd 4/16/76 at 10:00 A.M.	
1		
4/15/76	By MISHLER, CH. J. - Order of sustenance filed	
4-16-76	3 stenographers transcripts filed (2 dated 4-12-76 and one dated 4-13-76)	
4-16-76	Before MISHLER, CHJ - case called - deft & atty present - trial resumed - Jury retired for deliberations at 10:00 am on count 2 - at 12:25 PM Jury returned and informed the court that they are unable to reach a verdict on count 2 - court declared a mistrial on count 2 - jury discharged - trial concluded.	
4-16-76	Notice of motion filed received from Chambers with affidavit that the prosecution under 18-922 is a discriminatory prosecution in violation of due process clauses, etc.	
4-19-76	Stenographers transcript filed dated 4-16-76	
4-19-76	SUPERSEDING INDICTMENT FILED (S)	
4-19-76	Before MISHLER, CH J - case called - deft & attys present - deft arraigned and enters a plea of not guilty - same bail as in indictment in 75 CR 851.	
4/21/76	Notice of readiness for trial on superseding indictment filed-	

(a) (b) (c) (d)
Interval Start Date Lit Total
(per Section 11) End Date Code Days

Docket Entries - Elizabeth Jane Young Chin

A-3

R 851-2 ELIZABETH JANE YOUNG
CRIMINAL DOCKET

DATE	PROCEEDINGS
4/21/76	Letter from William Leibovitz dated 4/20/76 filed
4/21/76	Letter from Judge Mishler dated 4/21/76 filed
4/30/76	Stenographers Transcript dated 4/15/76 filed
5-3-76	Letter filed received from Chambers dated 4-28-76
	that the period of time between May 4 and June 21, 1976 is excludable time under this Court's rule concerning speedy trial.
5/19/76	Notice of motion to dismiss filed
6-7-76	Govts Memorandum of Law filed.
6-16-76	By MISHLER, CH J - Memorandum of Decision and Order filed denying motion of deft Elizabeth Young for dismissal of the superseding indictment.
6-18-76	Notice of appeal filed (from denial of above motion)
6-18-76	Docket entries and duplicate of notice mailed to the court of appeals.
6-22-76	By Mishler, Ch J - Order filed pursuant to 18:6002 and 6003 the said Michael Yanagita give testimony and provide other information, etc.; motion of Michael Yanagita re electronic surveillance filed (recvd from Chambers and ret'd as directed. argued and denied; motion of Marc Kondo re electronic surveillance filed; argued and denied. motion to quash subpoena served upon Marc Kondo argued and denied; affirmation of counsel James Reif filed.
6-21-76	Before Mishler, ch J - case called - deft & counsel present-trial ordered and begun - Jurors selected and sworn - motion to quash subpoena served upon Marc Rondo is denied-trial cont'd to June 22, 1976 at 10:00 am. motion of Marc Kondo re electronic surveillance argued and denied; motion of Michael Yanagita re electronic surveillance argued and denied.
6-22-76	Notice of appeal filed.
6-22-76	Docket entries and duplicate of notice mailed to the court of appeals.
6-22-76	By MISHLER, CH J - Order of commitment filed (MICHAEL K. YANAGITA)
6-22-76	By MISHLER, CH J - Order of commitment filed (MARC CHOYEI KONDO)
6-22-76	Before MISHLER, CH J - case called - deft & counsel present-trial resumed - witness Yanagita resumed the witness stand and again refused to answer any questions - witness was again held in contempt of court - witness committed to MCC for 1 month or to the time of verdict in the case on trial which ever comes

DATE	PROCEEDINGS
	first. Execution of commitment stayed until 2:00 PM June 22, 1976 - motion by deft for mistrial is denied - stay of witnesses Yanagita & Kondo extended to June 23, 1976 by 11:00 am - trial contd to 6-23-76.
6-23-76	Before MISHLER, CH J - case called - deft & counsel present - trial resumed - Govt rests - motion by deft for Judgment of Acquittal is denied Witness Michael Yanagita remanded to MCC. Bench Warrant ordered for deft KONDO - trial contd to June 24, 1976
6-24-76	Before MISHLER, CH J - case called - deft & atty present - trial resumed - deft Elizabeth Young Chin rests - defts renew motion for judgment of acquittal - denied - trial contd to June 25, 1976.
6-24-76	By MISHLER, CH J - Order to show cause filed, ret. July 2, 1976, why an order should not be made adjudging said Marc Kondo in contempt, etc.
6-24-76	By MISHLER, CH J - Order to show cause filed, ret. July 2, 1976. why an order should not be made adjudging said Michael Yanagita in contempt, etc. with proof of service
6-25-76	Before MISHLER, CH J - case called - deft & counsel present - trial resumed - XXXX at 12:30 PM the Jury retired for deliberations - at 3:30 PM the Jury returned with a verdict of guilty on counts 1 to 4 as to deft Kenneth Raymond Chin and not guilty on counts 5 to 8 incl. Jury polled & discharged - trial concluded - Memo of verdict signed by the foreman ordered filed - all motions reserved to time of sentence - sentencing date set for 9-17-76
6-29-76	Two stenographers transcripts filed (one dated June 23 and one dated June 24, 1976)
6-29-76	One transcript dated 4-16-76 handed to counsel for the deft Eleanor Jackson Piel (receipt in file)
6-30-76	Two stenographers transcripts filed (one dated Jun 21 and one dated June 22, 1976)
7-1-76	Record on appeal certified and mailed to C of A.
7-6-76	Scheduling order received from C of A & filed.
7-6-76	Acknowledgment received from C of A for receipt of record on appeal filed
7-12-76	Receipt in file for transcript, pages 739-855 signed by E. Hashton for E.J. Piel, Esq.
8-16-76	Notice of motion filed pursuant to 28:144 to recuse Judge Mishler from her sentencing now scheduled to take place on 9-17-76 and affidavit in support of motion filed (forwarded to Chambers)
8-26-76	Order of motion dated 8/5/76 to dismiss the appeals from the U.S. District Court for the Eastern District of New York, granted. (in the matter of Michael Raymond Chin & Marc Kondo)

Docket Entries - Elizabeth Jane Young Chin

A-5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELIZABETH JANE YOUNG

75 851 2

Docket No. Del.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY
	(Document No.)	
8-2-76	Supplemental Index to Record on appeal forwarded to the Court of Appeals.	
8/7/76	Landate received from the Court of Appeals that the Motion dated 8/11/76 to dismiss without prejudice the appeal from the U.S. District Court for the Eastern District of NY with proviso that it or the issues raised therein be reinstated after entry of judgment of conviction or in the alternative to stay these proceedings until an appeal from the judgment of conviction is filed which appeals shall be consolidated, is granted w/o prejudice to the deft - appellants raising the issues upon her appeal from the judgment of conviction that is expected to be entered following trial.	
9/13/76	Index to record on appeal returned and filed; acknowledgment received from George Ugilow.	
9-17-76	Before MISHLER, CH J - case called - deft & counsel Eleanor Jackson Piel present - motion by deft for judgment of acquittal argued and denied - verdict of guilty as to count 3 is set aside and dismissed. Imposition of sentence is suspended on count 1 and deft is placed on probation for 2x Three (3) years. Deft advised of right to appeal.	
9-17-76	Judgment and order of probation filed - certified copies to probation.	
9-17-76	Notice of appeal filed. docket entries and duplicate of notice mailed to the court of appeals	
9/21/76	Court's Notice of Appeal filed.	
9/21/76	Docket entries and duplicate of Notice of Appeal sent to the Court of Appeals.	
9/22/76	Acknowledgment sent to the Court of Appeals for receipt of record on appeal.	
	Acknowledgment sent to the Court of Appeals for receipt of supplemental record on appeal.	
10/5/76	Order received from the Court of Appeals that the record on appeal be filed on or before October 14th, 1976.	
10/7/76	Stenographers transcript dated 9.17.76 filed.	
10/7/76	Order to show cause on Marc Choyei Kondo filed.	
10/7/76	Order to show cause on Michael Kazuo Yanagita filed.	
10/7/76	Appellants brief and appendix filed, with letter to Judge Mishler from counsel for deft - Eleanor Jackson Piel.	

A TRUE COPY
 DATED Oct 13 1976
 JUDGE ORCEL
Jim Kautz

AO 757

Intral
 (per Section 11)Start Date
 End DateLtr. Total
 Code Days

DOCKET ENTRIES **KENNETH RAYMOND CHIN**

COURT - CRIMINAL DOCKET Assigned Trial DISTRICT 0712 CHIN, KENNETH RAYMOND defendant		Case Filed 11/11/75 851	Defendant No. 10
18-371,922(a)(3) Did conspire to obtain firearms and 2 not being licensed importers, mfrs. or dealers, etc.		MASH CASE NO 175 M 17 DATE RELEASED <input type="checkbox"/> Personal Rec <input type="checkbox"/> Unsecured B <input type="checkbox"/> Conditional Release Set (1000) <input type="checkbox"/> 10% Cr. <input checked="" type="checkbox"/> Surety E <input type="checkbox"/> Collater <input type="checkbox"/> 3rd Part <input type="checkbox"/> Custody <input type="checkbox"/> PSA (See Docket)	
U.S. Attorney & Asst Gavin Scotti		William Liebovitz 51 East 42nd St., NYC. 10017 667-06180	
ARREST 10/6/75 U.S. Custody Began on Above Charges	INDICTMENT Information <input type="checkbox"/> 11-11-75 Viewed <input type="checkbox"/> Deft's Info <input type="checkbox"/> 4/16/76	ARRAIGNMENT 11-20-75 Trial Set For 4/12/76 Trial Began <input type="checkbox"/> Trial Ended <input type="checkbox"/> Verdict <input type="checkbox"/> Disposition	SENTENCE Disposition <input type="checkbox"/> Convicted <input type="checkbox"/> On All Chg <input type="checkbox"/> Acquitted <input type="checkbox"/> On Lesser Offense <input type="checkbox"/> Dismissed <input type="checkbox"/> WOP <input type="checkbox"/> <input type="checkbox"/> Noted/Discontinued*
Search Warrant Return Summons Issued Served Arrest Warrant	COMPLAINT 10/6/75 VAC C70A	PRELIMINARY EXAMINATION OR REMOVAL HEARING Date Scheduled 10/16/75 Date Held Intervening Indictment <input checked="" type="checkbox"/>	OUTCOME <input type="checkbox"/> Dismissed <input checked="" type="checkbox"/> Held for District CJ <input type="checkbox"/> Held to Answer To U. S. District Court AT EDNY Magistrate's Initial: VEC/C70A
OFFENSE (In Complaint) Conspiracy to violate Gun Control Act of 1968. T-18 USC, Section 922(a)(3) and (6) and Section 371.			
* Show last names and suffix numbers of other defendants on same indictment information			
DATE 10/6/75 10-8-75 10/26/75 11/11/75 11-20-75 11-20-75 12/15/75 12/19/75 12/22/75 1-12-75	YOUNG 2 William Liebovitz, Esq. (Ret) 51 East 42nd Street N.Y. 10017 AUSA - Gavin Scotti. Bail reduced to \$10,000 10% Cash - Hearing adjourned to 10-28-75 at 2:00 PM - MS 070B - Bail made - Deft released. Case adjourned to November 12, 1975 at 2:00 PM. Indictment Filed. See 75 CR 851. (Before COSTANTINO) Before MISHLER, CH J - case called - defts present with counsel William Liebovitz - deft arraigned and each on his own behalf enters a plea of not guilty - bail conditions contd - dec. 19, 1975 for all motions and to set a trial date. Notice of Appearance filed. Notice of motion to suppress, bill of particulars, etc. filed ret. 12/19/75 Before MISHLER, CH J - Case called - Deft's motion suppressed - bill of particulars, etc. argued - Decision reserved - Certificate of engagement filed - trial set for 4/12/76 Supplemental affidavit filed in support of motion to suppress evidence (Chin); Memorandum of Law filed in support of motion to set aside search warrant and to suppress, etc.		
OPPOSITE THE APPLICABLE DOCKET ENTRIES IN SECTION IV SHOW IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE DELAY PER 18 USC § 3181(a) - "SPEEDY TRIAL ACT"			

Docket Entries - Kenneth Raymond Chin

A-7

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
1-20-76	Letter from Judge Mishler, granting extension to 1/20/76 of time to file denying affidavits filed				
1-20-76	Affidavit of NEIL WINDLEY filed				
1-20-76	Letter dated Jan. 20, 1976 to Ch. Judge Mishler from Edward Korman Chief Asst. U.S. Atty., filed.				
1-20-76	Reply memorandum filed				
2-0-76	Letter filed dated 2-18-76 received from Chambers and ret'd as directed.				
2/20/76	By MISHLER, CH. J. - Memorandum of Decision and Order filed denying motion to suppress				
3-17-76	Govts Notice of readiness for trial filed				
4-5-76	Notice of Motion filed, ret. 4-12-76, for suppressing evidence, etc.				
4-12-76	Before MISHLER, CH J - case called - deft & counsel present - On motion of deft Young the caption is amended to read Kenneth Raymond Chin and Elizabeth Jane Young now known as Elizabeth Jane Young Chin - hearing held on motion to suppress - Hearing concluded - motion denied - motion by deft for severance is granted on consent of the Govt. Trial ordered and begun as to deft Elizabeth Jane Young Chin and severed as to deft Kenneth Raymond Chin - Jurors selected and sworn - trial cont'd to 4-13-76 (Elizabeth Chin)				
4-16-76	Notice of motion filed received from Chambers and affidavit that the prosecution under 18, 922 is a discriminatory prosecution in violation of due process clauses, etc.				
4-16-76	3 stenographers transcripts filed (2 dated April 12, 1976 and one dated April 13, 1976)				
4-19-76	SUPERSEDING INDICTMENT FILED (S)				
4-19-76	Before MISHLER, CH J - case called - deft & counsel present - deft arraigned and enters a plea of not guilty - same bail as in relating 75 CR-851 Indictment.				
4/21/76	Notice of readiness for trial on superseding indictment filed				
4/21/76	Letter from William Leibovitz dated 4/20/76 filed				
4/21/76	Letter from Judge Mishler, dated 4/21/76 filed				
4/27/76	Letter from William Leibovitz dated 4/26/76 filed re: excludable time				
6-7-76	Govts Memorandum of law filed				
6-21-76	By MISHLER, CH J - Immunity Order filed pursuant to 18:6002 and 6003.				
6-21-76	Motion of Marc Kondo re electronic surveillance filed - argued and denied. Motion to quash subpoena served upon Marc Kondo - argued and denied. Affirmation of counsel James Reif filed ; motion of Michael Yanagita re electronic surveillance filed - argued and denied. Affidavit of Thomas Pattison, Asst. U.S. Atty. Criminal Division filed; Memorandum on behalf of Michael Yanagita filed (rec'd from Chambers and ret'd as directed)				
6-21-76	Before MISHLER, CH J - case called - defts & attys present - trial ordered & BEGUN - Jurors selected and sworn - Motion to quash subpoena served upon Marc Kondo is denied; Trial cont'd to June 22, 1976; motions of Marc Kondo and Michael Yanagita re electronic surveillance argued and denied.				
6-22-76	Notice of appeal filed - docket entries and duplicate of notice mailed to the court of appeals.				

UNITED STATES DISTRICT COURT
FEDERAL DOCKET

U.S. vs

KENNETH RAYMOND CHIN

75

851

Docket No. [Def]

DATE	PROCEEDINGS (continued)	EXCLUDABLE DELAY	
		(a)	(b)
6-22-76	By MISHLER, CH J - Commitment order filed (Michael K. Yanagita)		
6-22-76	By MISHLER, CH J - Commitment order filed (MARC CHOYEI KONDO)		
6-22-76	Before MISHLER, CH J - case called - deft & counsel present - witness Yanagita resumed the witness stand. The witness again refused to answer any questions - witness was again held in contempt of court - Witness committed to MCC for 1 month or to the time of verdict in the case on trial whichever comes first. Execution of commitment stayed until 2:00 PM June 22, 1976. Trial resumed - Motion by deft for a mistrial is denied - Stay of witnesses Yanagita & Kondo extended to June 23, 1976 by 11:00 am. Trial contd to 6-23-76.		
6-23-76	Before MISHLER, CH J - case called - deft & counsel present - trial resumed - Govt rests - motion by deft for a Judgment of Acquittal is denied. Witness Michael Yanagita remanded to MCC Bench warrant ordered for deft Marc Kondo - trial contd to 6-24-76		
6-24-76	Before MISHLER, CH J - case called - deft & atty present - trial resumed - defts renew motion for judgment of acquittal - motion denied - trial contd to June 25, 1976		
6-24-76	By MISHLER, CH J - Order to show cause, ret. July 2, 1976, why an order should not be made adjudging Michael Yanagita in contempt, etc.		
6-24-76	By MISHLER, CH J - Order to show cause filed, ret. 7-2-76, why an order should not be made adjudging Marc Kondo in contempt, etc. with proof of service		
6-25-76	Before MISHLER, CH J - case called - deft & counsels present - trial resumed - the court dismissed counts 2, 4, 6, & 8 as to deft Elizabeth Chin - at 12:30 PM the jury retired for deliberations - at 3:30 PM jury returned with a verdict of guilty as to counts 1 and 3 as to deft Elizabeth Chin and not guilty on counts 5 & 7 - jury polled and discharged - trial concluded - Memo of verdict signed by the Foreman ordered filed - all motions reserved to time of sentence - sentencing date set down for 9-17-76.		
6-30-76	Two stenographers transcript filed (one dated June 21 and one dated June 22, 1976)		
7-6-76	Acknowledgment received from C of A for receipt of record on appeal filed.		
7-12-76	Receipt in file for transcript, pages 739-855 signed by Elizabeth Hashten for E.J. Piel, Esq.		
8-16-76	Notice of motion filed pursuant to 28:144 to recuse Judge Mishler from sentencing the deft now scheduled to take place on 9-17-76 and affidavit in support of motion filed (forwarded to Chambers)		
8/26/76	Mandate received from the Court of appeals filed by Notice of Motion dated 8/5/76 to dismiss the appeals from the U.S. District Court for the Eastern District of NY is granted. (in the matter of Marc Choyei Kondo & Michael Yanagita)		
8-27-76	Letter filed dated 8-26-76 received from Chambers from Wm Leibovitz, Esq. re sentencing date now scheduled for 9-17-76 etc.		
9/7/76	Mandate received from the Court of Appeals that the defts motion dated 8/11/76 to dismiss without prejudice the appeal from the U.S. District Court for the Eastern District of NY		

AO 257

 Intervenor
 (per Section III)

 Start Date
 End Date

 Ltr. Total
 (Code Days)

/ 1

A-9

UNITED STATES DISTRICT COURT
CRIMINAL DIVISION

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELA
	(Document No.)	(a) (b) (c) (d)
	with proviso that it or the issues raised therein be reinstated after entry of judgment of conviction or in the alternative to stay these proceedings until an appeal from the judgment of conviction is filed which appeals shall be consolidated, is granted without prejudice to the deft - appellants raising the issues upon her appeal from the judgment of conviction that is expected to be entered following trial.	
9/13/76	Record on appeal returned acknowledged by George Ugilow.	
9/15/76	Affidavit in support of motion for reduction of sentence filed and forwarded to chambers.	
9-17-76	Before Mishler, Ch J - case called - deft & counsel Em. William Leibovitz present - motion by deft for judgment of acquittal argued and motion denied - Verdict of guilty as to counts 3 and 4 are set aside and are dismissed. Imposition of sentence is suspended and deft is placed on probation on each of counts 1 and 2 to run concurrently. Deft advised of right to appeal.	
9-17-76	Judgment and order of probation filed - certified copies to probation.	
9-17-76	Notice of appeal filed.	
9-17-76	Docket entries and duplicate of notice mailed to the court of appeals.	
9/20/76	Letter to Judge Mishler from counsel for deft advising the inaccuracies and omissions of the pre sentence report; Letter forwarded to chambers.	
9/20/76	By MISHLER, CH. J. - Order releasing bail filed.	
9/21/76	LETTER TO JUDGE MISHLER FROM COUNSEL FOR DEFT ADVISING THE INACCURACIES AND OMISSIONS OF THE PRE SENTENCE REPORT; LETTER FORWARDED TO CHAMBERS.	
9/21/76	Govts Notice of Appeal filed.	
9/21/76	Docket entries and duplicate of Notice of Appeal mailed to the C of A.	
9/22/76	Acknowledgment sent to the C of A for receipt of record on appeal.	
10/5/76	Order received from the Court of appeals that the record on appeal be filed on or before October 14th, 1976.	
10/7/76	Stereographs transcript dated 9/17/76 filed.	
10/7/76	Order to show cause on Michael Nazuo Yangita filed.	
10/7/76	Order to show cause on Marc Choyei Kondo filed.	

10, 257

Interval
Inner Section II

Start Date	End Date
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Ltr	Total
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NOTICE OF APPEAL - ELIZABETH JANE YOUNG CHIN

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- inst -

VINCENT RICHMOND CHIN and
ELIZABETH JANE YOUNG CHIN

Defendants

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

75 Cr. 851 (s)

SEP 17 1976

Chen, C.J.
(District Court Judge)TIME A.M. _____
P.M. _____

NOTICE OF APPEAL

Notice is hereby given that Elizabeth Jane Young Chinthe United States Court of Appeals for the Second Circuit from the ☒ Judgment ☐ Order ☐ other
(specify) _____ entered in this action on 17 September, 1976
(Date)Eleanor Jackson Piel
(Counsel for Appellant)

Address

36 West 44th Street,
New York, N.Y. 10018Date 17 September, 1976To: David Trager, Esq.,
U.S. Attorney-General
Eastern District of New YorkPhone Number (212) 682-8288

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

▶ QUESTIONNAIRE

- ☐
- I am ordering a transcript
-
- ☒
- I am not ordering a transcript

Reason:

- ☒
- Daily copy is available
-
- ☐
- U.S. Attorney has placed order
-
- ☐
- Other. Attach explanation

▶ TRANSCRIPT ORDER

Prepare transcript of

- ☐
- Pre-trial proceedings
-
- ☐
- Trial
-
- ☐
- Sentence
-
- ☐
- Post-trial proceedings

▶ DESCRIPTION OF PROCEEDINGS
FOR WHICH TRANSCRIPT IS
REQUIRED (INCLUDE DATE)The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ▶ Method of payment ☐ Funds ☐ CJA Form 21

ATTORNEY'S signature

DATE

17 September, 1976

▶ COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and
forwarded to Court of Appeals.

Date order received

Estimated completion date

Estimated number
of pages.

Date _____

Signature _____

(Court Reporter)

ORIGINAL

NOTICE OF APPEAL - KENNETH RAYMOND CHIN

UNITED STATES DISTRICT COURT

EASTERN DISTRICT-NEW YORK**FILED**

IN CLERK'S OFFICE Docket Number

UNITED STATES OF AMERICA vs. DISTRICT COURT E.D. N.Y.

75CR 851 (S)

75-CR-851-(S)

★ SEP 17 1976 ★ B MISHLER

(District Court Judge)

-against-

TIME A.M.

P.M.

KENNETH RAYMOND CHIN,
Defendant.NOTICE OF APPEALNotice is hereby given that KENNETH RAYMOND CHINthe United States Court of Appeals for the Second Circuit from the ☒ Judgment ☐ Order ☐ Other

(specify) _____ entered in this action on _____

(Date)

Date

To:

DAVID TRAGER, United States Atty.

Address

547 86th Street
Brooklyn, New YorkClerk of Court, Eastern
District of New YorkPhone Number 238-1400

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

▶ **QUESTIONNAIRE**

- ☐ I am ordering a transcript
☐ I am not ordering a transcript
Reason:
☐ Daily copy is available
☐ U.S. Attorney has placed order
☐ Other. Attach explanation

▶ **TRANSCRIPT ORDER**

- Prepare transcript of
☐ Pre-trial proceedings
☒ Trial
☒ Sentence 9/17/76
☐ Post-trial proceedings

▶ DESCRIPTION OF PROCEEDINGS
FOR WHICH TRANSCRIPT IS
REQUIRED (INCLUDE DATE)The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ▶ Method of payment ☐ Funds ☐ CJA Form 21

ATTORNEY'S signature

DATE

9/17/76

▶ **COURT REPORTER ACKNOWLEDGEMENT**To be completed by Court Reporter and
forwarded to Court of Appeals.

Date order received

Estimated completion date

Estimated number
of pages.

Date

Signature

(Court Reporter)

ORIGINAL

AFFIDAVIT OF NEAL FINDLEY FOR SEARCH WARRANT
SWORN TO OCTOBER 3, 1975

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

- against -

PREMISES KNOWN AS APARTMENT
 4B, 925 UNION STREET, BROOKLYN,
 NEW YORK, SUCH PREMISES BEING
 A SIX STORY BRICK BUILDING,
 SUCH BUILDING BEING POPULARLY
 KNOWN AS THE MILDRED BUILDING,

AFFIDAVIT FOR
SEARCH WARRANT

Defendant.

----- X

EASTERN DISTRICT OF NEW YORK, SS:

NEAL FINDLEY, being duly sworn, deposes and says that he is a Special Agent of the United States Secret Service, duly appointed according to law and acting as such.

Your deponent has reason to believe that within the PREMISES KNOWN AS APARTMENT 4B, 925 UNION STREET, BROOKLYN, NEW YORK, SUCH PREMISES BEING A SIX STORY BRICK BUILDING, SUCH BUILDING BEING POPULARLY KNOWN AS THE MILDRED BUILDING, within the Eastern District of New York, there is now being concealed a firearm, to wit, one AR-180 semi-automatic rifle, bearing serial number S-12585, which firearm constitutes evidence of a violation of Title 18, United States Code, Section 922(a)(6).

The source of your deponent's information and the grounds for his belief are:

1. An interview by Special Agents of the United States

Secret Service of Carl V. Copeland, Jr., a salesman at Coles Sporting Goods Store, Inglewood, California, a licensed firearms dealership, wherein he stated that he sold the above-described firearm, serial number S-12585, ^{for \$270} to a person who identified herself as Elizabeth Jane Young on July 29, 1975.

2. At the time of the purchase described in paragraph 1 above, Copeland advised that Elizabeth Jane Young identified herself by means of a California driver's license, H-3349891, which reflected her address to be 1555 6th Avenue, Los Angeles, California. Investigation by your deponent and other Special Agents of the United States Secret Service which revealed that on June 11, 1974, Elizabeth Jane Young notified United States Postal Service authorities in Los Angeles, California to forward all mail addressed to her to 3306 92 Street, Apartment 5L, Jackson Heights, New York.

3. Further investigation by your deponent and other Special Agents of the United States Secret Service which revealed that on August 30, 1974, Elizabeth Jane Young notified United States Postal Service officials of a change of address to 925 Union Street, Apartment 4B, Brooklyn, New York.

4. Investigation by your deponent and other Special Agents of the United States Secret Service which revealed that Elizabeth Jane Young presently resides at 925 Union Street, Apartment 4B, Brooklyn, New York. Such investigation included personal observation by Special Agent John Cunniff of the United States Secret Service of the premises above-described, which

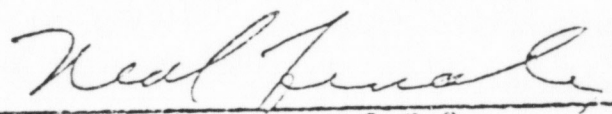
Affidavit of Neal Findley for Search Warrant
Sworn to October 3, 1975

A-14

revealed the name "Young" on the mailbox for Apartment 4B.

5. Additional grounds to support the issuance of a search warrant for the above-described premises are contained in a Supplemental Affidavit of your deponent which is submitted herewith.

WHEREFORE, your deponent respectfully requests that a search warrant be issued authorizing your deponent or any Special Agents of the United States Secret Service to search the PREMISES KNOWN AS APARTMENT 4B, 925 UNION STREET, BROOKLYN, NEW YORK, SUCH PREMISES BEING A SIX STORY BRICK BUILDING, SUCH BUILDING BEING POPULARLY KNOWN AS THE MILDRED BUILDING and to seize the above-described firearm and any other evidence relevant thereto.


S/A Neal Findley, U.S.S.S.

Sworn to before me this
3rd day of October 1975

VINCENT M. COTOGGIO

A TRUE COPY

U.S.S.S.

U.S.S.S.

SUPPLEMENTAL AFFIDAVIT OF NEAL FINDLEY FOR SEARCH
WARRANT, SWORN TO OCTOBER 3, 1975

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

- against -

PREMISES KNOWN AS APARTMENT
4B, 925 UNION STREET, BROOKLYN,
NEW YORK, SUCH PREMISES BEING
A SIX STORY BRICK BUILDING,
SUCH BUILDING BEING POPULARLY
KNOWN AS THE MILDRED BUILDING,

SUPPLEMENTAL AFFIDAVIT

Defendant.

----- X

EASTERN DISTRICT OF NEW YORK, SS:

NEAL FINDLEY, being duly sworn, deposes and says that he is a Special Agent of the United States Secret Service, duly appointed according to law and acting as such.

This Supplemental Affidavit is submitted in connection with and in support of an application for a search warrant for the above-described premises. A search warrant is sought in connection with an investigation surrounding the official visit of Emperor Hirohito of Japan to the United States and, more particularly, to the City of New York which is currently scheduled to take place between the 4th day of October 1975 and the 7th day of October 1975. The additional grounds to support the issuance of the search warrant are as follows:

1. Investigation by Special Agents of the United States

Secret Service which revealed that during the year 1973 Elizabeth Jane Young resided at 4303 Arlington Avenue, Los Angeles, California with one Joanne Miyamoto. This information was derived by an examination of the records of the United States Postal Service and by an independent investigation of the Federal Bureau of Investigation.

2. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Joanne Miyamoto and Mary Kochiyama have been attempting to gain access to functions that would be attended by Emperor Hirohito.

3. Investigation by Special Agent George Hofmann of the United States Secret Service on the morning of October 3, 1975 conducted at Apartment 3B, 545 West 126 Street, Manhattan, which revealed that the above-named Mary Kochiyama currently resides at that address. This investigation included an interview by Special Agent Hofmann of the occupants of Apartment 3B, 545 West 126 Street, Manhattan, who confirmed the fact that Mary Kochiyama resided at the apartment, but who advised Special Agent Hofmann that they were unable to provide the Secret Service with any information concerning her present whereabouts.

4. Information supplied to the United States Secret

Service by the Federal Bureau of Investigation to the effect that an investigation has disclosed that Joanne Miyamoto and Mary Kochiyama are currently members of the Asian Americans for Action, a Japanese led organization, which organization has in the past demonstrated against the United States-Japan Security Treaty.

5. Federal Bureau of Investigation Intelligence information provided to your deponent and the United States Secret Service describes Mary Kochiyama as a contact for various extremist groups in New York City, including the Black Panther Party and the Black Liberation Army.

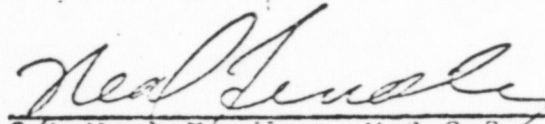
-- It is the opinion of the undersigned and of the United States Secret Service that the existence of the firearm described in your deponent's affidavit in support of this search warrant and the involvement of the above-mentioned individuals poses a serious threat to the personal safety of the Emperor of Japan and others during the official visit to the United States. Accordingly, pursuant to Title 18 of the United States Code, Section 2056 and the authorization to protect the person of a visiting head of a foreign government as embodied therein, the foregoing information is provided in support of the application of the United States for a search warrant for the above-described premises.

WHEREFORE, your deponent respectfully requests that a search warrant be issued authorizing your deponent or any Special Agents of the United States Secret Service to search the PREMISES

Supplemental Affidavit of Neal Findley for Search
Warrant, sworn to October 3, 1975

A-18

KNOWN AS APARTMENT 4B, 925 UNION STREET, BROOKLYN, NEW YORK, SUCH PREMISES BEING A SIX STORY BRICK BUILDING, SUCH BUILDING BEING POPULARLY KNOWN AS THE MILDRED BUILDING and to seize the above-described firearm and any other evidence relevant thereto.


S/A Neal Findley, U.S.S.S.

Sworn to before me this
3rd day of October 1975

VINCENT A. CROGGIO

United States Magistrate
Eastern District of New York

U.S.M.

E.D.N.Y.

SEARCH WARRANT

93 (Rev. Apr. 1973)

Search Warrant

United States District Court

FOR THE

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Docket No.

VS.

Case No.

PREMISES KNOWN AS APARTMENT
4B, 925 UNION STREET, BROOKLYN,
NEW YORK, SUCH PREMISES BEING
A SIX STORY BRICK BUILDING,
SUCH BUILDING BEING POPULARLY
KNOWN AS THE MILDRED BUILDING

SEARCH WARRANT

To ANY SPECIAL AGENT, UNITED STATES SECRET SERVICE

Affidavit (s) having been made before me by Special Agent Neal Findley,
United States Secret Service

that he has reason to believe that { ~~on the person of~~
on the premises known as }

APARTMENT 4B, 925 UNION STREET, BROOKLYN, NEW YORK, SUCH PREMISES
BEING A SIX STORY BRICK BUILDING, SUCH BUILDING BEING POPULARLY
KNOWN AS THE MILDRED BUILDING

in the EASTERN District of NEW YORK

there is now being concealed certain property, namely

here describe property

a firearm, to wit, one AR-180 semi-automatic rifle, bearing serial
number S-12585

and as I am satisfied that there is probable cause to believe that the property so described is being
concealed on the person or premises above described and that grounds for application for issuance of the
search warrant exist as stated in the supporting affidavit(s).

Search Warrant

A-20

You are hereby commanded to search within a period of _____
(not to exceed 10 days) the person or place named for the property specified, serving this warrant
and making the search { in the daytime (6:00 a.m. to 10:00 p.m.) } and if the property be found
~~anytime day or night~~
there to seize it, leaving a copy of this warrant and receipt for the property taken, and prepare a written
inventory of the property seized and promptly return this warrant and bring the property before
_____ as required by law.

Federal judge or magistrate

Dated this 3rd day of October

, 19 75

VINCENT A. CHOCGIO

VAC

Judge (Federal or State Court of Record) or Federal Magistrate.

*The Federal Rules of Criminal Procedure provide: "The warrant shall be served in the daytime, unless the issuing authority, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at times other than daytime" (Rule 41(c)). A statement of grounds for reasonable cause should be made in the affidavit(s) if a search is to be authorized "at any time day or night" pursuant to Rule 41(c).

INDICTMENT

D:GWS:ms UNITED STATES DISTRICT COURT
753, 538 EASTERN DISTRICT OF NEW YORK

WISLER, J.

----- X

UNITED STATES OF AMERICA :

- against - :

KENNETH RAYMOND CHIN and
ELIZABETH JANE YOUNG, :

Defendants. :

----- X

75 CR 851
INDICTMENT

Cr. No. _____

T.18 U.S.C. §§371,
922(a)(3) & 2

11-11-75

THE GRAND JURY CHARGES:

COUNT I

On or about and between July 29, 1975 and October 4, 1975 within the Eastern District of New York and elsewhere, the defendants KENNETH RAYMOND CHIN and ELIZABETH JANE YOUNG, did knowingly and wilfully conspire to commit an offense against the United States, namely, to obtain firearms in Los Angeles, California, to wit: a U.S. M1 carbine, Serial Number 5487136; an Armalite AR 7 rifle, Serial Number 89474; an Armalite 180 rifle, Serial Number 12585; and an Armalite AR 180 rifle, Serial Number S-12590, and to transport said firearms from Los Angeles, California into Brooklyn, New York, the State where the defendants KENNETH RAYMOND CHIN and ELIZABETH JANE YOUNG did then reside, the defendants KENNETH RAYMOND CHIN and ELIZABETH JANE YOUNG not being licensed importers, manufacturers, dealers, or collectors, of said firearms, in violation of Title 18 United States

Code, Section 922(a)(3).

In furtherance of said unlawful conspiracy and to further the objects thereof, the defendants KENNETH RAYMOND CHIN and ELIZABETH JANE YOUNG did commit the following:

OVERT ACTS

1. On or about July 29, 1975, the defendant ELIZABETH JANE YOUNG purchased a firearm, Serial Number S-12585 from Coles Sporting Goods, 1030 South La Brea Street, Inglewood, California.

2. On or about October 4, 1975, the defendants KENNETH RAYMOND CHIN and ELIZABETH JANE YOUNG, did possess at 925 Union Street, Brooklyn, New York, Apartment 4B four (4) firearms, Serial Numbers 5487136, 89474, S-12585, and S-12590. (Title 18 United States Code, Section 371).

COUNT II

From on or about August 15, 1975 to October 4, 1975, the exact dates being unknown to the grand jury, within the Eastern District of New York and elsewhere, the defendants KENNETH RAYMOND CHIN and ELIZABETH JANE YOUNG, both residing at 925 Union Street, Brooklyn, New York, Apartment 4B and not being licensed importers, dealers, or collectors, did knowingly and wilfully transport from California to Brooklyn, New York, four (4) firearms, namely, a U.S. M 1 carbine, Serial Number 5487136; an Armalite AR 7 rifle, Serial Number

Indictment

A-23

89474; an Armalite AR 180 rifle, Serial Number S-12585; and an Armalite AR 180 rifle, Serial Number S-12590 which firearms were purchased in the State of California by the defendants.

(Title 18 United States Code Sections 922(a)(3) and 2.

William P. Epsila
FOREMAN

David M. Quinn
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

AFFIDAVIT OF ELEANOR JACKSON PIEL SWORN TO
JANUARY 8, 1976 IN SUPPORT OF MOTION TO
SUPPRESS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

-against-

75 Cr. 851
Mishler, J.

KENNETH RAYMOND CHIN and
ELIZABETH JANE YOUNG,

AFFIDAVIT

Defendants.

-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ELEANOR JACKSON PIEL being duly sworn deposes and
says:

I am the attorney for ELIZABETH JANE YOUNG and
make this affidavit in support of a previous motion to
suppress the fruits of a search executed on October 4, 1975
pursuant to a warrant issued on October 3, 1975 by Magistrate
Vincent A. Catoggio for the search of premises located at
Apartment 4B, 925 Union Street, Brooklyn, New York.

It is the contention of defendant YOUNG that the
motion must be granted because;

1) the affidavits themselves in so far as their

contents have been revealed* do not establish probable cause for the issuance of the warrant under applicable constitutional standards, 2) the affidavits are based upon false information which the affiant (Agent Neal Findley) either knew or should have known were false, entitling defendant YOUNG to a hearing on the issue of falsity.

The issue raised by 1 above will be argued in an accompanying memorandum of law.

The issue of falsity insofar as facts are known to affiant is as follows:

In a "Supplemental Affidavit" submitted in connection with the application for a search warrant of the premises Apartment 4B, 925 Union Street, Brooklyn, New York, Agent Findley asserted under oath that "Investigation by Special Agents of the United States Secret Service...revealed that during the year 1973 Elizabeth Jane Young resided at 4303 Arlington Avenue, Los Angeles, California with one, Joanne Miyamoto. This information was derived by an examination of the records of the United States Postal Service and

* The contents of a sealed affidavit were disclosed to counsel on December 19, 1975 with the exception of paragraph 2. Defendant Young maintains that this Court must order inter alia disclosure of the contents of paragraph 2 if it does not grant the motion as a matter of law on the evidence before it.

by an independent investigation of the Federal Bureau of Investigation." (Emphasis supplied).

Affiant alleges on information and belief that in truth and in fact Joanne Miyamoto never lived at 4303 Arlington Avenue, Los Angeles and that no postal records of any kind could have revealed her as residing at that address. On information and belief the registered address of Joanne Miyamoto at or about 1973 was 2208 West 43rd Street, Los Angeles, California, Zip Code 90008 and any check on the postal records for such period would reveal that fact.

Accordingly I allege, that based upon what I believe to be the truth, Agent Findley untruly and falsely asserted that a bona fide investigation was made by Special Agents of the United States Secret Service which revealed that Joanne Miyamoto lived at 4303 Arlington Avenue, Los Angeles, California, and that no bona fide examination was made independently of the records of the United States Postal Service by the Federal Bureau of Investigation. Any investigation would reveal that Joanne Miyamoto resided and received mail at 2208 West 43rd Street, Los Angeles, California, Zip Code 90008 during all relevant periods in 1973.

Accordingly all the other allegations contained in the "Supplemental Affidavit" (so far as they have been revealed) are not connected in any way to defendant ELIZABETH JANE YOUNG. Nor is any connection whatsoever made

between either defendants and Mary Kochiyama concerning any relevant or pertinent alleged illegal activity. It is not alleged that either defendant knew or associated with Mary Kochiyama who is in the "Supplemental Affidavit" said to be "a contact for various extremist groups in New York City, including the Black Panther Party and the Black Liberation Army." Thus there could be no legal or logical connection between defendant YOUNG and any reasonable danger posed (assuming on these facts there was such a danger) "to the personal safety of the Emperor of Japan and others during the official visit to the United States" nor could Agent Findley have had any reason to act as he stated under oath pursuant to 18 U.S.C. 3056 since there was no danger from the acts of defendant YOUNG based upon any reasonable analysis of the evidence.


I further assert that, based upon all the evidence so far before the Court in this case including the inflammatory publicity* which must have been solicited by agents of the government, there is no other conclusion than that Secret Service and F.B.I. agents acted recklessly and in bad faith in obtaining the search warrant and in arresting the defendants.

*. Samples of such inflammatory newspaper accounts in the New York Times and Daily News on October 5, 1975 are attached to an affidavit of the undersigned dated December 12, 1975, and filed with this Court.

Affidavit of Eleanor Jackson Piel sworn to Jan. 8,
1976 in Support of Motion to Suppress

A-28

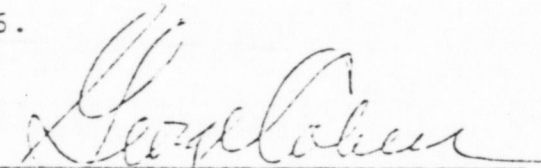
Accordingly affiant requests that a hearing be held
to determine pursuant to United States v. Freeman 358 F2d
459, 463 n.4 (2 Cir. 1966) the veracity of the sworn
allegations of Agent Findley and the good faith of the
government.


ELEANOR JACKSON PIEL

Sworn to before me this

8th day of January,

1976.


Notary Public

GEORGE COHEN
Notary Public, State of New
No. 31 0002100
Qualified in New York County
Commission Expires March 30, 1977

PORTION OF AFFIDAVIT OF NEAL FINDLEY SWORN TO
JANUARY 28, 1976 IN RESPONSE TO THE AFFIDAVIT
OF ELEANOR JACKSON PIEL SWORN TO JANUARY 8, 1976

threat they may have posed was significantly diminished.

c. Third, the defendants attack the truthfulness of Paragraph "1" of my supplemental affidavit which alleges: "Investigation by Special Agents of the United States Secret Service which revealed that during the year 1973 Elizabeth Jane Young resided at 4303 Arlington Avenue, Los Angeles, California with one Joanne Miyamoto."

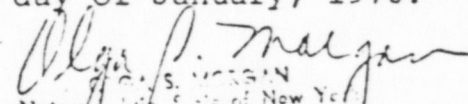
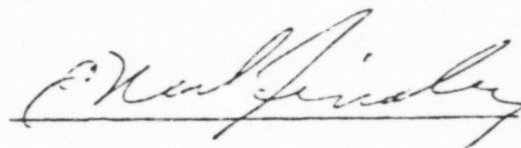
The defendants claim that Joanne Miyamoto did not reside at 4303 Arlington Avenue, Los Angeles, California, but at "a separate residence bearing no resemblance to the address of Ms. Young." This allegation is only partially accurate. First, let me say, we have been advised by the Federal Bureau of Investigation that the correct address on Arlington Avenue in which the defendant Young resided was 4304 rather than 4303 Arlington Avenue and that the discrepancy was due to a typographical error in the transmission of the information. Second, it is true that Joanne Miyamoto did not reside at that address; however, she did reside in an adjoining two story house at 2208 - 43rd Street immediately around the corner from the one-story residence of Ms. Young at 4304 Arlington Avenue. This discrepancy in the affidavit is, I believe, attributable

Portion of Affidavit of Neal Findley sworn to
January 28, 1976, etc.

A-30

to the haste with which the information was gathered and
the supplemental affidavit was prepared.

Sworn to before me this
28th day of January, 1976.



Notary Public
State of New York
No. 2-301915
Qualified in Kings County
Commission Expires March 30, 1977

SUPERSEDING INDICTMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

- against -

KENNETH RAYMOND CHIN, and
ELIZABETH JANE YOUNG, now
known as "Elizabeth Jane
Young Chin",

Defendants.

- - - - - X

THE GRAND JURY CHARGES:

COUNT ONE

From on or about July 29, 1975 to October 4, 1975, the exact dates being unknown to the Grand Jury, within the Eastern District of New York and elsewhere, the defendants KENNETH RAYMOND CHIN and ELIZABETH JANE YOUNG, now known as "Elizabeth Jane Young Chin", both residing at 925 Union Street, Brooklyn, New York, Apartment 4-B, and not being licensed importers, dealers, manufacturers or collectors, did knowingly and wilfully transport, from California to New York, a firearm, to wit: an Armalite, AR-180, .223 caliber, semi-automatic rifle, serial number S-12585 which firearm had been purchased or otherwise obtained in California by the defendants. (Title 18, United States Code, Sections 922(a)(3) and 2).

COUNT TWO

From on or about July 29, 1975 to October 4, 1975, the

SUPERSEDING INDICTMENT

Cr. No. 75 CR 851 (s)
(Title 18, U.S.C. §922(a)(3)
2)

exact dates being unknown to the Grand Jury, within the Eastern District of New York and elsewhere, the defendants KENNETH RAYMOND CHIN and ELIZABETH JANE YOUNG, now known as "Elizabeth Jane Young Chin", both residing at 925 Union Street, Brooklyn, New York, Apartment 4-B, and not being licensed importers, dealers, manufacturers or collectors, did knowingly and wilfully receive in New York, a firearm, to wit: an Armalite, AR-180, .223 caliber, semi-automatic rifle, serial number S-12585 which firearm had been transported from California to Brooklyn, New York by the defendants, after it had been purchased or otherwise obtained by them in California. (Title 18, United States Code, Sections 922(a)(3) and 2).

COUNT THREE

From on or about August 12, 1975 to October 4, 1975, the exact dates being unknown to the Grand Jury, within the Eastern District of New York and elsewhere, the defendants KENNETH RAYMOND CHIN and ELIZABETH JANE YOUNG, now known as "Elizabeth Jane Young Chin", both residing at 925 Union Street, Brooklyn, New York, Apartment 4-B, and not being licensed importers, dealers, manufacturers or collectors, did knowingly and wilfully transport, from California to New York, a firearm, to wit: an Armalite, AR-180, .223 caliber, semi-automatic rifle, serial number S-12590 which firearm had been purchased or otherwise obtained in California by the defendants. (Title 18, United States Code, Sections 922(a)(3) and 2).

COUNT FOUR

From on or about August 12, 1975 to October 4, 1975, the exact dates being unknown to the Grand Jury, within the Eastern District of New York and elsewhere, the defendants KENNETH RAYMOND CHIN and ELIZABETH JANE YOUNG, now known as "Elizabeth Jane Young Chin", both residing at 925 Union Street, Brooklyn, New York, Apartment 4-B, and not being licensed importers, dealers, manufacturers or collectors, did knowingly and wilfully receive in New York, a firearm, to wit: an Armalite, AR-180, .223 caliber, semi-automatic rifle, serial number S-12590 which firearm had been transported from California to Brooklyn, New York by the defendants, after it had been purchased or otherwise obtained by them in California. (Title 18, United States Code, Section 922(a)(3) and 2).

COUNT FIVE

From on or about July 1, 1975 to October 4, 1975, the exact dates being unknown to the Grand Jury, within the Eastern District of New York and elsewhere, the defendants KENNETH RAYMOND CHIN and ELIZABETH JANE YOUNG, now known as "Elizabeth Jane Young Chin", both residing at 925 Union Street Brooklyn, New York, Apartment 4-B, and not being licensed importers, dealers, manufacturers or collectors, did knowingly and wilfully transport, from California to New York, a firearm, to wit: an Armalite, AR-7, .22 caliber, semi-automatic rifle, serial number 89474 which firearm had been purchased

or otherwise obtained in California by the defendants. (Title 18, United States Code, Sections 922(a)(3) and 2).

COUNT SIX

From on or about July 1, 1975 to October 4, 1975, the exact dates being unknown to the Grand Jury, within the Eastern District of New York and elsewhere, the defendants KENNETH RAYMOND CHIN and ELIZABETH JANE YOUNG, now known as "Elizabeth Jane Young Chin", both residing at 925 Union Street, Brooklyn, New York, Apartment 4-B, and not being licensed importers, dealers, manufacturers or collectors, did knowingly and wilfully received in New York, a firearm, to wit: an ArmaLite, AR-7, .22 caliber, semi-automatic rifle, serial number 89474 which firearm had been transported from California to Brooklyn, New York by the defendants, after it had been purchased or otherwise obtained by them in California. (Title 18, United States Code, Section 922(a)(3) and 2).

COUNT SEVEN

From on or about July 1, 1975 to October 4, 1975, the exact dates being unknown to the Grand Jury, within the Eastern District of New York and elsewhere, the defendants KENNETH RAYMOND CHIN and ELIZABETH JANE YOUNG, now known as "Elizabeth Jane Young Chin", both residing at 925 Union Street, Brooklyn, New York, Apartment 4-B, and not being licensed importers, dealers, manufacturers or collectors, did knowingly and wilfully transport, from California to New York, a firearm, to wit: an M-1, .30 caliber Carbine, serial number

5487136 which firearm had been purchased or otherwise obtained in California by the defendants. (Title 18, United States Code, Section 922(a)(3) and 2).

COUNT EIGHT

From or about July 1, 1975 to October 4, 1975, the exact dates being unknown to the Grand Jury, within the Eastern District of New York and elsewhere, the defendants KENNETH RAYMOND CHIN and ELIZABETH JANE YOUNG, now known as "Elizabeth Jane Young Chin", both residing at 925 Union Street, Brooklyn, New York, Apartment 4-B, and not being licensed importers, dealers, manufacturers or collectors, did knowingly and wilfully receive in New York, a firearm, to wit: an M-1, .30 caliber Carbine, serial number 5487136 which firearm had been transported from California to Brooklyn, New York by the defendants, after it had been purchased or otherwise obtained by them in California. (Title 18, United States Code, Sections 922(a)(3) and 2).

A TRUE BILL

FOREMAN

DAVID G. TRAGLER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

MEMORANDUM OF DECISION AND ORDER DENYING
MOTION TO SUPPRESS

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA

No. 75-CR-851

- against -

ELIZABETH JANE YOUNG and
KENNETH RAYMOND CHIN,

Memorandum of Decision
and Order

Defendants.

-----x

February 23, 1976

MISHLER, CH. J.

Defendants are charged with illegally transporting firearms in interstate commerce in violation of 18 U.S.C. §922 (a)(3) and (6), and with conspiracy to commit the offense, 18 U.S.C. §371. Defendants move, pursuant to F.R.Crim.P. 41, to suppress as evidence weapons and other material seized during a search of apartment 4B in premises 925 Union Street, Brooklyn, New York on October 4, 1975, which search was authorized by a search warrant issued by United States Magistrate Vincent A. Catoggio on October 3, 1975. The motion which the government submitted to support its request for the search warrant attacks the sufficiency of the affidavits which the government submitted to support its request for the search warrant.

/1 Two affidavits made by Special Agent Neal Findley of the United States Secret Service, both sworn to October 3, 1975, were submitted to the magistrate. One of the

Memorandum of Decision and Order Denying
Motion to Suppress

A-37

Defendants argue that (1) the affidavits are insufficient as a matter of law since they fail to state facts indicating that a federal crime was probably committed; (2) the affidavits fail to establish a nexus between the purchase of a gun in California and the likelihood of its presence at the apartment sought to be searched; and (3) the search was not timely made. ^{/2} Defendants also charge that the warrant issued was based on false statements that affected the magistrate's ^{/3} probable cause determination.

/1 Cont.

affidavits (described as the supplemental affidavit) was ordered sealed by the magistrate on application of the United States Attorney, on the representation that revelation of the information would place the informant's life in jeopardy. The supplemental affidavit, with paragraph 2 excised, was made available to defendants' counsel at oral argument of this motion. The government represented that the safety of the informant required that the information contained in paragraph 2 be withheld.

/2 The time lapse from purchase of the gun in California, July 29, 1975, to the day of the search, October 4, 1975, was 67 days.

/3 Findley's affidavit, in which he stated the grounds for his information and belief that one (1) AR-180 semi-automatic rifle, bearing Serial Number S-12585, was concealed at 925 Union Street, Brooklyn, New York, is as follows:

1. An interview by Special Agents of the United States Secret Service of Carl V. Copeland, Jr., a salesman at Coles Sporting Goods Store, Inglewood, California, a licensed firearms dealer, wherein

The disclosed portions of the supplemental affidavit allege that the Federal Bureau of Investigation supplied information to the United States Secret Service that Joanne Miyamoto and Mary Kochiyama were members of the Asian Americans for Action, which organization had demonstrated against the United States-Japanese security treaty, and that Kochiyama was a contact for various extremist groups, including the Black Panther Party and the Black Liberation Army. These

12 Cont.

he stated that he sold the above-described firearm, serial number S-12585, for \$270 to a person who identified herself as Elizabeth Jane Young on July 29, 1975.

2. At the time of the purchase described in paragraph 1 above, Copeland advised that Elizabeth Jane Young identified herself by means of a California driver's license, N-3849891, which reflected her address to be 1555 6th Avenue, Los Angeles, California. Investigation by your deponent and other Special Agents of the United States Secret Service which revealed that on June 11, 1974, Elizabeth Jane Young notified United States Postal Service authorities in Los Angeles, California to forward all mail addressed to her to 3306 92 Street, Apartment 5L, Jackson Heights, New York.

3. Further investigation by your deponent and other Special Agents of the United States Secret Service which revealed that on August 30, 1974, Elizabeth Jane Young notified United States Postal Service officials of a change of address to 925 Union Street, Apartment 4B, Brooklyn, New York.

4. Investigation by your deponent and other Special Agents of the United States Secret Service which revealed that Elizabeth Jane Young presently resides at 925 Union Street, Apartment 4B, Brooklyn, New York. Such investi-

portions also allege that Miyamoto and Kochiyama pose a threat to the personal safety of the Emperor of Japan during his visit, which was scheduled to take place between October 4, 1975 and October 7, 1975; the search for the aforementioned semi-automatic rifle is said to be related to the threat thus posed.

SUFFICIENCY OF THE AFFIDAVIT

Findley's affidavit shows that at the time of purchase of the firearm in Inglewood, California, Young had directed that all her mail addressed to 1555 6th Avenue, Los Angeles, California, be forwarded to 3306 92nd Street, Jackson Heights, Queens, New York, and then to 925 Union Street (Apt. 4B), Brooklyn, New York. The fair reading of the affidavit, United States v. Ventresca, 380 U.S. 102, 109, 85 S.Ct. 741, 746 (1965), affords a basis for the magistrate's finding that Young, who was not a licensed importer, dealer or collector, transported the firearms to New York in violation of 18 U.S.C. §922(a)(3). The records of Cole's Sporting Goods Store, and of the United States Postal Service, provided the necessary

/3 Cont.

gation included personal observation by Special Agent John Cunniff of the United States Secret Service of the premises above-described, which revealed the name "Young" on the mailbox for Apartment 4B.

Memorandum of Decision and Order Denying
Motion to Suppress

A-40

probable cause. See United States v. Weatherford, 471 F.2d 47, 49 (7th Cir. 1972), cert. den. 411 U.S. 972, 93 S.Ct. 2144 (1973).

THE NEXUS BETWEEN THE PURCHASE OF THE GUN AND ITS
PRESENCE AT APARTMENT 4B, 925 UNION STREET

The likely place for concealment of a semi-automatic rifle would be the owner's home, United States v. Steeves, 525 F.2d 33, 38 (8th Cir. 1975); United States v. Rahn, 511 F.2d 290, 294 (10th Cir. 1975), cert. den. 44 U.S.L.W. 3201 (U.S. 10/6/75). It was not necessary for the government to submit direct evidence that the firearm was on the premises to be searched. The probability that it was there is sufficient, United States v. Mulligan, 488 F.2d 732, 736 (9th Cir. 1973); cert. denied, 417 U.S. 930, 94 S.Ct. 2640 (1974); United States v. Lucarz, 430 F.2d 1051, 1055 (9th Cir. 1970).

TIMELINESS OF THE SEARCH

The attack upon the warrant as being untimely is a claim that at the time of the issuance of the warrant, the magistrate did not have reasonable cause to believe that the gun was in Young's possession at that time -- some 66 days after its purchase. Lapse of time is not the sole variable in determining whether the belief as to someone's possession

Memorandum of Decision and Order Denying
Motion to Suppress

A-41

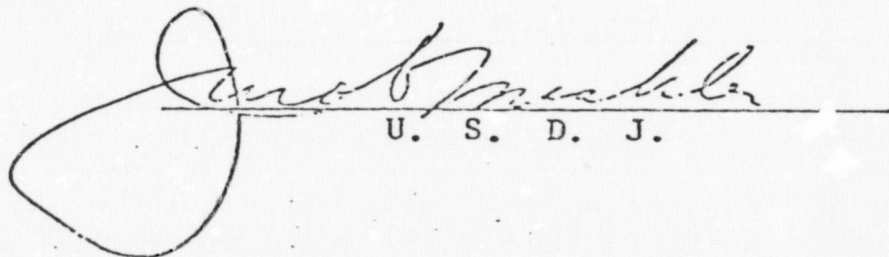
of evidence is reasonable. A week might conceivably be too long a period for the search of perishable goods such as narcotics. The test to be applied must be the reasonable probability of whether Young would likely have disposed of an automatic rifle, purchased under the circumstances in the case at bar, within the period of time which had passed. The expectation that the firearm was at the premises at the time of the warrant's issuance was not unreasonable. United States v. Steeves, supra at 37-38.

MISSTATEMENT IN SUPPLEMENTAL AFFIDAVIT

The court finds the affidavit in support of the warrant is sufficient. The alleged misstatements in the supplemental affidavit are therefore inconsequential. United States v. Gonzales, 488 F.2d 833, 838 (2d Cir. 1973).

Defendants' motions to suppress the evidence seized during the search at 925 Union Street are in all respects denied, and it is

SO ORDERED.


U. S. D. J.

MEMORANDUM OF DECISION AND ORDER DENYING
MOTION TO DISMISS SUPERSEDING INDICTMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

75 CR 851

UNITED STATES OF AMERICA

-against-

Memorandum of Decision
and OrderKENNETH RAYMOND CHIN and
ELIZABETH JANE YOUNG,

Defendants.

June 16, 1976

MISHLER, CH. J.

Defendant Elizabeth Jane Young moves to dismiss the superseding indictment filed April 19, 1976, on the ground that the acquittal after trial of the conspiracy count (Count One), of the prior indictment, collaterally estops the government from prosecuting on the superseding indictment. Alternatively, she moves to dismiss Counts Three and Four of the superseding indictment on the ground that prosecution on those counts would violate her fifth amendment right not ". . . for the same offense to be twice put in jeopardy of life and limb."

On November 11, 1975, the grand jury returned indictment 75 CR 851, charging that on July 29, 1975, and October 4, 1975, defendant conspired with Kenneth Raymond Chin to transport four (4) firearms^{/1} from Los Angeles, California, to Brooklyn, New York, where Young and Chin allegedly resided, in violation of 18 U.S.C. §§371, 922(a) (3). Two overt acts were alleged: (1) the purchase of an Armalite rifle, serial number 12585; and (2) the possession of said four (4) firearms at 925 Union Street, Brooklyn, New York. Defendant and Chin were also charged with transporting the firearms from California to their residence in Brooklyn. Immediately prior to trial, the court granted the government's motion to sever the trials of Young and Chin. The government elected to proceed first against Young. The jury returned a verdict of not guilty on Count One and was unable to agree on a verdict on Count Two. The court thereupon declared a mistrial on Count Two.

/1

The weapons were identified as a United States M-1 carbine, serial number 5487136; an Armalite AR 7 rifle, serial number 89474; an Armalite 180 rifle, serial number 12590; and an Armalite 180 rifle, serial number 12585.

The superseding eight-count indictment charges Young and Chin with the transportation and receipt of four firearms, i.e., an Armalite AR-180, serial number 12585; an Armalite AR-180, serial number 12590; an Armalite AR 7, serial number 89474; and an M-1 carbine, serial number 5487136.

During the trial of the first indictment, before charging the jury, the court struck the testimony concerning the Armalite 180 rifle, serial number 12590, on the ground that the government had failed to prove that Young had transported the weapon into New York.¹² Defendant contends that this ruling was a determination precluding further prosecution for transporting and receiving the weapon as charged in Counts Three and Four of the superseding indictment. The court's ruling striking the testimony was an evidentiary ruling only, and did not determine the guilt or innocence of Young with respect to the crimes charged; therefore, the ruling does not bar prosecution for importing and receiving the subject weapon

¹²

The government's proof showed only that Coles Sporting Goods Store in California sold the gun to one Mark Choyei Kondo and that it was found in defendant's home when the said weapon and others were seized pursuant to a search warrant.

as charged in Counts Three and Four of the superseding indictment.

Defendant further contends that the acquittal on the conspiracy count was a finding against the government on the two issues presented in the superseding indictment as to each firearm, i.e., (1) transportation into the State of New York, and (2) receipt of the weapons by the defendants. ¹³

In Pereira v. United States, 347 U.S. 1, 74 S.Ct. 358 (1954), defendants were convicted of three counts of mail fraud and conspiracy to commit the substantive crimes. The Supreme Court indicated the extent to which double jeopardy protects a defendant from convictions of both conspiracy and the substantive crime upon which the conspiracy is based as follows:

It is settled law in this country that the commission of a substantive offense and a conspiracy to commit it are separate and distinct crimes, and a plea of double jeopardy is no defense to a conviction for both (citations omitted). Only if the substantive offense and the conspiracy are identical does a conviction for both constitute double jeopardy.

Id. at 11, 74 S.Ct. at 364.

The original indictment narrowly limited the charges to transporting firearms into New York State by a

¹³The transportation charges are the odd numbered counts while the receiving charges are the even numbered counts.

resident of New York State,¹⁴ and conspiring to transport the weapons into New York State (Count One). Defendant understood the specific issues involved in both counts.¹⁵

Proof of importation into New York State is not essential to prove the conspiracy charge. Proof that defendant was a resident of the State of New York at the time of the importation is an essential element of the substantive offense; for the conspiracy count, the government's burden on proof of residency was only to prove that the conspiracy contemplated that one of the conspirators be a resident of New York at the time of importation.

The not guilty verdict on the conspiracy count does not bar prosecution of the substantive counts charged in the superseding indictment, United States v. Zane, 495 F.2d 683, 691 (2d Cir. 1974); United States v. Kramer, 289 F.2d 909, 913 (2d Cir. 1961).

¹⁴ Count Two was based on the specific act of violating 18 U.S.C. §922(a)(3) in that defendant was charged in the language of the section making it unlawful ". . . to transport into . . . the State where [s]he resides . . . any firearm purchased or otherwise obtained by such person outside that State"

¹⁵ Defendant's counsel argued ". . . this is not a possession case . . . this is a case only concerning the illegal transportation of a firearm (Tr. p. 478)."

A-47

SO ORDERED.

J. A. C. M. S. H. L.
U. S. D. J.

JUDGMENT AND PROBATION ORDER -
ELIZABETH JANE YOUNG CHIN

United States District Court for
 Eastern District of N.Y.

ELIZABETH JANE YOUNG CHIN

DOCKET NO. ➤

75 CR 851 (S)

JUDGMENT AND PROBATION ORDER

in the presence of the attorney for the government
 the defendant appeared in person on this date ➤

MONTH	DAY	YEAR
9	17	1976

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Eleanor Jackson Piel, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that
 there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged
☒ GUILTY. counts 1

FINDING &
 JUDGMENT

Defendant has been convicted as charged of the offense(s) of violating T-18, U.S. Code, Secs. 922(a)(3) ; 2, in that from on or about July 29, 1975 to Oct. 4, 1975, the exact dates being unknown to the Grand Jury, the defendant, with another, did transport from California to New York, 2 firearms and not being licensed importers, dealers, manufacturers or collectors which firearms had been purchased or otherwise obtained in California by the defendant

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE
 OR
 PROBATION
 ORDER

Imposition of sentence is suspended on count 1 and the defendant is placed on probation for a period of 3 years.

SPECIAL
 CONDITIONS
 OF
 PROBATION

BEST COPY AVAILABLE

FILED
 IN CLERK'S OFFICE
 U.S. DISTRICT COURT E.D. N.Y.

SEP 17 1976

TIME A.M.

Judgment and Probation Order -
Elizabeth Jane Young Chin

A-49

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this order be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

Jacob M. Miller

Date

9/12/76

**JUDGMENT AND PROBATION ORDER -
KENNETH RAYMOND CHIN**

United States of America vs. **United States District Court for
Eastern Dist. of NY**

DEFENDANT

KENNETH RAYMOND CHIN

DOCKET NO. ➤ 75 CR 851 (S)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government
the defendant appeared in person on this date ➤

MONTH DAY YEAR
9 17 1976

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

W. Leibovitz, Esq.

(Name of counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea,☐ NOLO CONTENDERE, ☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged☒ GUILTY. counts 1 ~~AND 2~~ AND 2

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of

violating T-18, U.S.C. Secs. 371, 922(a)(3) and 2, in that on or about and between July 29, 1975 and Oct. 4, 1975, the defendant, with another, did knowingly & wilfully conspire to commit an offense against the U.S. namely, to obtain firearms in Los Angeles, California and transport same to Brooklyn, New York, and not being licensed importers, dealers or collectors

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE OR PROBATION ORDER

Imposition of sentence is suspended on each of counts 1 and 2 and the defendant is placed on probation for a period of 3 years oneach count to run concurrently.

SPECIAL CONDITIONS OF PROBATION

FILED
IN CLERK'S OFFICE
S. DISTRICT COURT E.D. N.Y.

SEP 17 1976

TIME A.M.

Judgment and Probation Order -
Kenneth Raymond Chin

A-51

ADDITIONAL
CONDITIONS
OF
PROBATION

In addition to the general conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for violation occurring during the probation period.

COMMITMENT
RECOMMEN-
DATION

The Court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge
☐ U.S. Magistrate

D. Jacobus

Date

9/17/76

69

GOVERNMENT'S EXHIBIT 6 IN EVIDENCE: FIREARMS TRANSACTION RECORD, E.J.

D.P. (MENT OF THE TREASURY BUREAU OF ALCOHOL, TOBACCO AND FIREARMS FIREARMS TRANSACTION RECORD PART I - INTRA-STATE OVER THE COUNTER		TRANSFEROR'S TRANS- ACTION NO. YOUNG 7186	
NOTE: Please read and carefully follow instructions on reverse. Prepare an original only.			
SECTION A - TO BE COMPLETED BY TRANSFEREE OR BUYER			
1. TRANSFEREE'S (Buyer's) NAME (Last, First, Middle) (Mr., Mrs., Miss)		2. HEIGHT	3. WEIGHT
YOUNG, ELIZABETH JANE		5-4	112
4. RACE		CHIN.	
5. RESIDENCE ADDRESS (No., Street, City, State, Zip Code)		6. DATE OF BIRTH	7. PLACE OF BIRTH
1555 6th AVE L.A. CALIF 90019		10-10-44	CALIF.
8. CERTIFICATION OF TRANSFEREE (Buyer) - An untruthful answer may subject you to criminal prosecution. Each question must be answered with a "yes" or a "no" inserted in the box at the right of the question.			
a. Are you under indictment or information in any court for a crime punishable by imprisonment for a term exceeding one year?		No	
b. Have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year? (Note: The actual sentence given by the judge does not matter - a yes answer is necessary if the judge could have given a sentence of more than one year.)		No	
c. Are you a fugitive from justice?		No	
d. Are you an unlawful user of, or addicted to, marijuana, or a depressant, stimulant, or narcotic drug?		No	
e. Have you ever been adjudicated mentally defective or have you ever been committed to a mental institution?		No	
f. Have you been discharged from the Armed Forces under dishonorable conditions?		No	
g. Are you an alien illegally in the United States?		No	
h. Are you a person who, having been a citizen of the United States, has renounced his citizenship?		No	
I hereby certify that the answers to the above are true and correct. I understand that a person who answers any of the above questions in the affirmative is prohibited by Federal law from purchasing and/or possessing a firearm. I also understand that the making of any false oral or written statement or the exhibiting of any false or misrepresented identification with respect to this transaction is a crime punishable as a felony.			
TRANSFEREE'S (Buyer's) SIGNATURE		DATE	
X. <i>Elizabeth Young</i>		7-20-75	
SECTION B - TO BE COMPLETED BY TRANSFEROR OR SELLER			
THE PERSON DESCRIBED IN SECTION A <input checked="" type="checkbox"/> IS KNOWN TO ME <input type="checkbox"/> HAS IDENTIFIED HIMSELF TO ME IN THE FOLLOWING MANNER			
9. TYPE OF IDENTIFICATION (Driver's License, etc.)		10. NUMBER ON IDENTIFICATION	
CALIF #		N 3849891	
On the basis of: (1) the statements in Section A; (2) the verification of identity noted in Section B; and (3) the information in the current list of Published Ordinances, it is my belief that it is not unlawful for me to sell, deliver or otherwise dispose of the firearm described below to the person identified in Section A.			
11. TYPE (Rifle, etc.)	12. MODEL	13. CALIBER OR GAUGE	14. SERIAL NO.
RIFLE	180	223	512585
15. MANUFACTURER (and importer, if any)			
ARMA-LITE			
16. TRADE/CORPORATE NAME AND ADDRESS OF TRANSFEROR (Seller) (Hand stamp may be used)			17. FEDERAL FIREARMS LICENSE NO.
COLE'S			
18. TRANSFEROR'S (Seller's) SIGNATURE		19. TRANSFEROR'S TITLE	20. TRANSACTION DATE
<i>Phil Coiland</i>		Clerk	7-25-75

INSTRUCTIONS

1. Only ONE ATF Form 4473, Part I, is required for each Intra-State over-the-counter transaction. The form is retained by the seller and filed as indicated in instruction #

2. All signatures required on this form must be in ink. All other entries on the form must be in ink or be typewritten.

3. The buyer (transferee) of a firearm will, in every instance, personally complete Section A of the form and certify (sign) that the answers are true and correct; if, because of inability of the buyer to read or write, the answers are written by another person, this person and another person will sign as witnesses to the buyer's answers and/or signature.

4. When the transferee (buyer) of a firearm is a corporation, company, association, partnership or other such business entity, an officer authorized to act on behalf of the business will sign the certification in Section A of the form and attach a written statement, executed under the penalty of perjury, stating:

- (a) That the firearm is being acquired for the use of and will be the property of that business entity, and
- (b) The name and address of that business entity.

5. The transferor (seller) of a firearm will, in every instance, complete Section B of the form.

6. If more than one firearm is involved, the identification required by Section B, items 11 through 15, must be provided for each firearm. The identification of the firearm transferred in a transaction which covers more than one weapon may be on a separate sheet of paper, which must be attached to the form covering the transaction.

7. The transferor (seller) of the firearm is responsible for determining the lawfulness of the transaction and for keeping proper records of the transaction. Consequently, the transferor should be familiar with the provisions of the Gun Control Act of 1968 (U.S.C. Title 18, Chapter 44) and Title VII, Unlawful Possession or Receipt of Firearms, (82 Stat. 1971) and Part 178, Commerce in Firearms and Certain Ammunition, Title 26, Code of Federal Regulations.

8. Upon completion of the firearm transaction, the transferor (seller) must make a part of his permanent firearm records the form recording that transaction and any supporting documents. Forms 4473, Part I, and any supporting documents must be filed either chronologically by date of transaction, alphabetically by name of transferee (buyer), or numerically by transaction number if the transferor assigns transaction numbers to the forms.

NOTICE:

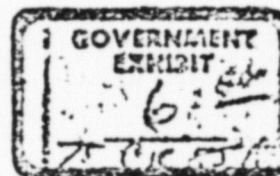
Under 18 U.S.C. Chapter 44 and Title VII of Public Law 90-351, 18 U.S.C. Appendix 1201-1203, as amended, firearms may not be sold to or received by certain persons. The information and certification on this form are designed so that a person licensed under Chapter 44 may determine if he may lawfully sell or otherwise dispose of a firearm to the person identified in Section A, and to alert the transferee (buyer) of certain restrictions on the receipt and possession of firearms.

THIS FORM SHOULD NOT BE USED FOR SALES OR TRANSFERS WHERE NEITHER PERSON IS LICENSED UNDER CHAPTER 44 OF TITLE 18 U.S.C.

DEFINITIONS

1. *Intra State Over-the-Counter Transaction* - The sale or other disposition of a firearm by the transferor (seller) to a transferee (buyer) who is a resident of the State in which the transferor's business is located, occurring on the transferor's business premises.

2. *Published Ordinances* - The publication containing those State laws and local ordinances relevant to the enforcement of Chapter 44 of Title 18, U.S.C., which is annually published in the Federal Register and distributed to each Federal firearms licensee by the Director, Bureau of Alcohol, Tobacco and Firearms.





CITY OF NEW YORK
FIREARMS CONTROL BOARD
ORIGINAL APPLICATION
RIFLE—SHOTGUN PERMIT

GOVERNMENT'S EXHIBIT 33
APPLICATION FOR FIREARMS
PERMIT, E.J. YOUNG

LAST NAME YOUNG		FIRST NAME EDWARD		MIDDLE INITIAL E	SOCIAL SECURITY NO. 1-2-3 45-6789	
ADDRESS (NUMBER AND STREET) 925 Union STREET				APT./FLOOR 4L	CITY OR POST OFFICE NY	STATE NY
SEX F	DATE OF BIRTH OCT 10, 1945	HEIGHT 5'4"	WEIGHT 112 lbs	COLOR HAIR BLACK	COLOR EYES BLUE	CITIZEN OF (COUNTRY) U.S.A.
OCCUPATION HOUSEWIFE				RESIDENCE TELEPHONE NO. 2-1 4424		

After referring to separate instruction sheet, list below all Rifles and Shotguns in your possession. If more space is needed, complete Form PCB-5 (Supplemental Declaration).

SERIAL NUMBER	MAKE / MANUFACTURER	CAL / GAUGE	TYPE	MODEL	TOTAL GUNS
1					0
2					
3					
4					

NO PRESENT POSSESSION
OF ANY RIFLES AND OR SHOTGUNS
IN THE CITY OF NEW YORK

Were you ever arrested, indicted or convicted for any crime or violation (excepting minor traffic violations), in any jurisdiction, federal, state or local? Yes ☐ No ☒ If yes, list the following information. Use additional sheets if more space is needed.

DATE OF ARREST	CITY AND STATE OF ARREST	CHARGE	DISPOSITION OR SENTENCE COURT AND DATE

→ If Your Answer to Questions C or D is Yes, Refer to Separate Instruction Sheet. ←

- A Have you ever been dishonorably discharged from the armed forces of this country? YES ☐ NO ☒
- B Are you addicted to narcotic drugs, or an habitual drunkard? YES ☐ NO ☒
- C Have you ever suffered from any physical defect or sickness which would interfere with or handicap you in the handling of a shotgun or rifle? YES ☐ NO ☒
- D Have you ever been confined for alcoholism, mental illness or drug addiction? YES ☐ NO ☒
- E Are the rifles or shotguns listed on this application to be used exclusively in a television, movie, stage or similar theatrical production? YES ☐ NO ☒
- F Are the rifles or shotguns listed on this application to be used exclusively by a professional photographer in the pursuance of his profession? YES ☐ NO ☒
- G Are you the holder of a current pistol license or firearm dealer's license, valid in New York State? YES ☐ NO ☒
If Yes, indicate type, license number and issuing authority.

WARNING: Any willful or material omission of false statement is a crime punishable by fine, imprisonment or both.

STATE OF **N.Y.**
COUNTY OF **N.Y.**

GEORGE J. SLOAN
NOTARY PUBLIC, State
No. 30 9681305
Qualified in New York County
Certificate filed with New York County Clerk
Commission Expires March 31, 1976

BEING DULY SWORN,
DEPOSES AND SAYS THAT ALL OF THE FOREGOING INFORMATION IS TRUE.

SWORN TO BEFORE ME:

July 19, 1975

Notary Public / Commissioner of Records

Applicant's Signature

BELOW FOR DEPARTMENTAL USE ONLY

APPLICATION EXAMINED BY	TITLE	SIGNATURE	RECOMMENDATION:
		P. Colo	
ACTION BY CONTROL BOARD		ACTION BY APPEALS BOARD	
DATE	TITLE	SIGNATURE	

REQUESTS TO CHARGE - ELIZABETH JANE YOUNG CHINREQUEST NO. 2

You are instructed that the statute under which the government has brought this case was designed by Congress because of its concern with the widespread traffic in firearms and with their general availability to those whose possession thereof was contrary to the public interest. The principal purpose of the federal gun control legislation, therefore, was to curb crime by keeping "firearms out of the hands of those not legally entitled to possess them because of age, criminal background, or incompetency."

Taken from Huddleston v. U.S. 415 U.S. 814, 824

The purpose of this title (law) is to provide support for law enforcement officials in their fight against crime and not to place any undue or unnecessary restrictions or burdens on law-abiding citizens with respect to the acquisition or possession or use of firearms appropriate to the purpose of hunting, trap shooting, target shooting, personal protection or any other lawful activity and this law is not intended to discourage the private ownership or use of firearms by law-abiding citizens for lawful purposes.

See Congressional Declaration of Purpose

18 USC § 921 (Supp) USCA p 235

REQUEST NO. 10

You are instructed that the statute makes the importation of a firearm by a resident of a state into that state from another state or the receipt of an imported weapon knowing said weapon to have been imported from without the state, a crime. A person may, however, move his residence from one state to another and may, under those circumstances, bring with him a firearm which he or she has legally acquired in another state.

The issue of the defendant's residence at the pertinent times involved in this case is a question of fact for you to resolve.

(See attached official Publication of the Department of the Treasury)

REQUEST NO. 14

You are instructed that there is no federal restriction on transporting the kind of firearms involved in this case if a person is relocating his residence. You are also instructed that a person may have a legal residence in two states and may legally purchase firearms in either state and may transport them along with his other personal belongings when he moves from one state to another.

(si) pages 7-8
See page 9 of Gun Control Act, Questions and Answers, published by the Department of the Treasury (attached)

EXCERPTS FROM ATTACHMENTS TO REQUEST 14

subject to the same controls as complete firearms. (26 CFR 178.11)

(23) Does the GCA prohibit anyone from making a handgun, shotgun or rifle?

No, provided it is not for sale and is not a firearm as defined in the National Firearms Act.

(24) May foreign visitors buy firearms and ammunition?

Yes, provided they meet the residency requirement. Legal aliens are considered residents of either the State in which they have lived for 90 days prior to the sale or the State in which their embassy or consulate is located. If the principal officer authorizes the firearm purchase in writing. Ammunition purchases must meet the same requirements as for citizens.

(25) May a non-licensee transport firearms interstate for sporting purposes?

Generally yes. However, the Gun Control Act makes it unlawful for certain persons, such as felons, to engage in the interstate transportation of any firearms or ammunition.

(26) Is there a Federal permit which allows an individual to take his personal firearms into another State or carry them locally?

No. Any requirement in this area is the responsibility of State and local authorities. (Pub. 712)

(27) Can someone who isn't in the gun business make a sale to a person in another State?

No. A person who is not licensed may not transfer a firearm by any means to someone in another State who is not a licensee.

(28) Can someone who isn't in the gun business sell a firearm to another person who resides in the same State as the seller?

Yes. There is nothing in the Gun Control Act which prohibits such a sale between residents of the same State provided the sale is not in violation of the State or local ordinance and the purchaser is not prohibited by any provision of the GCA from acquiring or possessing a firearm. In general, a single sale, unattended by other circumstances, does not require that a person be licensed.

7

(29) What constitutes residency in a State?

The State of residence is the State in which an individual regularly resides or maintains his home. A member of the Armed Forces on active duty is a resident of the State in which his permanent duty station is located. If a member of the Armed Forces maintains his home in one State and his permanent duty station is in another nearby State to which he commutes each day, then he may purchase a firearm in either the State where he is stationed or where he maintains his home.

(30) Can a person who resides in one State and owns property in another State purchase a firearm in either State?

If the person maintains a home in both States and resides in both States for certain periods of the year, he may, while residing in each particular State, purchase a firearm in that State. But simply owning property in another State does not qualify the person to purchase a firearm in that State.

(31) Can a non-licensee ship a firearm out of State?

Yes, provided the addressee is a firearms licensee.

(32) Can a person who is relocating out of State move his firearms with other household goods?

Yes, he may transport Title I firearms if he is not prohibited by the GCA or Title VII. Certain Title II firearms, (identified in 26 CFR 178.28) must have the Director's prior approval before they may be legally moved. The person must notify the mover that a firearm is being transported. He should also check State and local laws where he is relocating to insure that his movement into his new State does not violate any State law or local ordinance. (26 CFR 178.28) (See Pub. 712)

(33) Are there restrictions on a licensee's activities within his own State?

Yes, firearms and ammunition transactions must conform with the GCA, State laws and local ordinances. (See Pub. 712)

(34) Can a licensed dealer send or sell a gun to anyone?

No, except for rifles and shotguns in contiguous State sales, a licensee may not make direct sales to a non-resident. What

JUDGE MISHLER'S CHARGE AND EXCEPTIONS

(Pages A-59 through A-134 following)

1 Please seat the jury.

2 (Jury entered jury box.)

3 CHARGE OF THE COURT

4 THE COURT: Good morning, ladies and gentlemen:

5 You have, on your seats, a copy of what I will
6 call a Memorandum of Verdict only because I do not
7 know what else to call it. It has no place, officially,
8 in the proceedings. It is one of the devices I use
9 in a multi-defendant case or a multi-count case so
10 that the jury can be reminded as to the substance of
11 the counts. It is not intended to tell you the full
12 charge or all the allegations of the charge.

13 In every one of these cases, of course, the
14 charge is that the particular weapon was brought from
15 outside the state into the State of New York. I don't
16 say that in any of the brief descriptions of the counts
17 in this Memorandum of Verdict.

18 You will notice that as to Counts 2, 4, 6 and 8
19 a line is through the name of the defendant Elizabeth
20 Jane Young and I'd rather call her by her maiden name
21 for this trial so that when I talk about one of the
22 other defendant you will know that when I talk about
23 the defendant Young it is Young and when I talk about
24 the defendant Chin it is Chin. We all know they are
25 husband and wife and Miss Young's present name is

1 Elizabeth Jane Young Chin. I am just doing it this
2 way for the purpose of clarity.

3 I dismissed those counts as against the defen-
4 dant Young because I found as a matter of law that
5 a defendant could not be charged with both transport-
6 ing a gun and at the same time receiving a gun because
7 as I will charge you later, the idea of receipt is
8 to get it from somebody else and someone who is
9 charged with transporting couldn't very well get it
10 from somebody else. So, as a matter of law, I dis-
11 missed it. However, that ruling has nothing whatever
12 to do with your determination on the remaining counts.
13 It doesn't help or hurt either defendant as to
14 remaining counts. It has nothing to do with it.

15 Again, I say, I dismissed it as a matter of law
16 and for that reason. You just won't consider Counts
17 Two, Four, Six and Eight as it relates to the defendant
18 Young.

19 The trial of an action in American courts is
20 considered an adversary proceeding. It means that
21 on one side of the issue, a disputed issue -- for
22 example, one of the hotly disputed issues in this
23 case is the residence of Young at the time she
24 allegedly transported a gun into the State of New York --
25 the Government says she was a resident of the State

1 of New York residing at 925 Union Street in Brooklyn
2 while the defendants say she was not at that particular
3 time; that she had given up, abandoned her residence
4 in New York and became a resident of California. So,
5 they are adversaries on that issue and they are adver-
6 saries on other issues in this case. It means that
7 the lawyers who represent the clients are adversaries
8 representing clients.
9

10 Now, the lawyers' duty in a trial is, in that
11 adversary framework, to develop the evidence, bring
12 the evidence in to show evidence on both sides that
13 support the issue.

14 The lawyers are protagonists. They are repre-
15 sentatives of their clients and their clients' posi-
16 tions and in their zeal they show their identity with
17 the particular positions and, of course, in this case
18 their zeal has evidenced the sharpness of the dispute
19 and at times the battle has been somewhat acrimonious.
20 But, that is the way it is and you should not judge
21 the case by the lawyers; as to whether you like a
22 lawyer or don't like a lawyer, because that has nothing
23 to do with the case. You must be beyond that and
24 look at the issues in the case.
25

26 One lawyer may have pleased you and one lawyer

1
2 may have disappointed you or given you a certain
3 amount of -- well -- cause for resentment. I don't
4 say it's true but if that's so, that's not the way
5 to decide the case, obviously.

6 Nor should my rulings in the case or my
7 reprimands during the trial have any effect whatso-
8 ever. To me, they are rather impersonal.

9 My position as the sole judge of the law in
10 the case is that I have a duty to manage the case and
11 management means trying to exclude irrelevant material;
12 matters that are so collateral to the issues in the
13 case that they would only serve to confuse the issues.

14 My object is to sharpen the issues in the trial --
15 so the jury can clearly see what is involved -- to
16 help the jury decide the issues.

17 Now, my function obviously is quite different
18 than lawyers.

19 Lawyers see their clients' point of view and
20 urging it conscientiously, they cannot be expected to
21 see it as I see it. They sit in a different position.
22 That's the way it should be.

23 But, I didn't intend to indicate in any way
24 by my rulings that I favor one side or the other; that
25 I believe a party is guilty or innocent. I have no

1 opinion and my sole interest in this case is to do
2 the best I know how in interpreting the law and in
3 applying the law equally, no matter how it affects
4 either side. At any time when I don't keep that in
5 mind and I stray from that principle, then I just am
6 not doing a good job.
7

8 Now, I can just tell you that I have done my
9 best to do a good job and I am asking you to do your
10 best to do a good job and that involves understanding
11 the relationship of all the parties to the case and
12 the relationship of all the parties to each other.

13 So, I have described the function of a lawyer
14 and I have indicated that as distinguished from the
15 lawyer, the Judge's position is one of impartiality,
16 one of objectivity. The same is true of the jury.

17 Your decisions, your view of the evidence
18 should be purely objective, purely impartial. But
19 as between the Court and the jury there is a clear line
20 of demarcation of the power and authority and function
21 of the parties in a jury trial.

22 As I said, the Court is the sole judge of the
23 law. You must accept the law as the Court charges it.
24 You may think in your own minds that it is quite
25 illogical and you may not even like it, but nevertheless,

you have a duty to accept it and follow it. If you do anything else, then you violate your duty.

In this country the stability of society more or less depends on the predictability of the law. We shouldn't have to worry that it might change every day and no one should have to be concerned lest one jury in one case follow it one way and another jury follow it another way. So, uniformity has its virtue and that is why you, as jurors, are obliged to follow the law whether you like it or not and I expect that you will.

I, on the other hand, have no business sticking my nose into your function and obligation in this trial. You and you alone are the sole judges of the facts. You and you alone determine what happened in this case. Looking at the evidence, the conflicting or contradictory evidence offered, you make your determination. That is a jury function. You make it after you deliberate on the matter, viewing the evidence. Then, you make your determination and by that, I mean, you decide what happened here.

I mentioned the issue of residence because that is one of the obvious issues in this trial. You decide whether or not at the time of the alleged transportation

1 of a weapon into the State of New York the defendant
2 Young was a resident of the State of New York and
3 after you make that determination and the others involv-
4 ing the essential elements of the crime charged, then,
5 applying the law as I charge it, you determine the
6 guilt or innocence as to each defendant, as to each
7 crime charged.
8

9 Now, there are in effect 24 charges.

10 The defendant Chin is charged with transporting
11 and receiving each of the four weapons and you under-
12 stand that each weapon accounts for two charges;
13 one, the transportation and the other, receiving.

14 The defendant Young is charged with eight
15 counts of transportation and in each one of those charges
16 it is as though it was a separate trial. So, you must
17 judge the evidence against each charge and see if
18 the Government sustained its burden of proof as I
19 will charge it as to each count.

20 In my charge I may use the singular and plural
21 interchangeably; defendant or defendants.

22 It is only when I single a particular defendant
23 out --and I will do that by name -- that the charge
24 refers only to that defendant. Otherwise, it applies
25 to both.

2 So, when I say in every criminal case the
3 defendant is presumed to be innocent that means, of
4 course, both defendants.

5 That is true. Every defendant in every criminal
6 trial is presumed to be innocent and that is a strong
7 time-honored presumption in Anglo-American law. It
8 means that you must conclude at the outset of the
9 trial that those defendants are innocent on all the
10 charges against them and that presumption of innocence
11 continues throughout the trial and throughout your
12 deliberations and is sufficient in and of itself to
13 acquit a defendant.

14 It is only if the Government proves the guilt
15 of the defendant by proof beyond a reasonable doubt
16 that that presumption of innocence is overcome and
17 then no longer survives. It is clearly demonstrated
18 by what I refer to as a Scotch verdict.

19 You may have heard the term, Scotch verdict.
20 Well, in Scotland, they have three verdicts; guilty,
21 not guilty and not proved.

22 So, when somebody says a Scotch verdict, they
23 mean, well, it wasn't proved but a not guilty or guilty
24 decision was not arrived at -- no such decision was ar-
rived at.

1
2 In this country we have two verdicts; guilty
3 and not guilty. So, not guilty includes, not proved.

4 Your precise obligation is to find out whether
5 the Government proved the guilt of the defendants
6 by proof beyond a reasonable doubt.

7 Now, a reasonable doubt is the kind of doubt
8 a reasonable person has after carefully viewing all
9 the evidence in the case. It is a doubt based on
10 reason and common sense -- and you have been called
11 upon to use your common sense and your experience
12 throughout this trial -- and it is based on the state
13 of the record and all the evidence in the case.

14 A reasonable doubt is not a vague, speculative,
15 imaginary doubt. It's not an emotional doubt, the kind
16 of doubt you might have that arises from a distaste
17 for performing an unpleasant task.

18 In other words, if the Government proved its
19 case beyond a reasonable doubt, well, you don't do
20 your duty by saying, well, I just don't like to
21 convict. I don't like to convict a fellow citizen.
22 It is not that kind of a doubt.

23 A reasonable doubt is the kind of doubt that
24 would make a reasonable person hesitate to act in a
25 matter of importance to himself or herself.

Proof beyond a reasonable doubt is therefore, proof of such convincing character that you would be willing to rely and act upon it unhesitatingly in the most important and weighty of your own affairs.

The Government's burden is not to prove that the defendant is guilty beyond all doubt. There is a qualifying adjective there -- beyond all reasonable doubt.

The Government's burden is not to prove that every bit of evidence offered during the trial is true beyond a reasonable doubt. The Government's burden is to prove all essential elements of the crime charged beyond a reasonable doubt and sometime later in this charge I will charge you on what the essential elements are as to each crime charged.

The defendant is not obliged to offer any proof. The defendant has the right to rely on the failure of the Government to prove its case beyond a reasonable doubt.

Now, the Foreman sent me a note -- may I have it, please --

THE CLERK: Yes.

(Document handed to Court.)

THE COURT: And it says: Your Honor, Judge

Mishler, why weren't Marc Kondo and Mr. Yanagita subpoenaed to the court to establish their whereabouts on pertinent dates?

Now, there is no proof in the record one way or the other as to whether or not Yanagita or Kondo were subpoenaed in this trial. You must decide the case on the evidence that you have, not on what you don't have. You cannot speculate on matters not in the record. You may draw reasonable inferences as I will charge you later on based on what is in the record. However, a reasonable doubt may arise from the failure of the Government to offer proof. If you find that the record is unsatisfactory in that the failure to offer the evidence -- for whatever reason or rather the testimony is not in the record because of the failure to have Mr. Yanagita and Mr. Kondo before you, then that failure alone could create a reasonable doubt.

(Continued on next page.)

1 I said that the jury's verdict must be based
2 on what is in the record, the evidence in the record.

3 First, what is evidence:

4 Evidence is the method by which a disputed
5 fact is proved or disproved.

6 There are two general classifications of
7 evidence, first there is direct evidence and then
8 there is circumstantial evidence or indirect evidence.

9 Direct evidence is the testimony of witnesses
10 as to what those witnesses saw or heard. For example,
11 Mr. Copeland came to the witness stand and he testified
12 as to a transaction. That was direct evidence as to
13 that transaction. I don't ask you to believe the
14 evidence, I just point to the evidence. Throughout
15 here I will be telling you that credibility is a
16 question of fact for the jury alone, and that is
17 believability, as to whether you should believe the
18 witnesses or believe the documents which are in
19 evidence.

20 Circumstantial evidence, or indirect evidence,
21 however, is proof of a disputed fact by the jury
22 drawing an inference from established circumstances and
23 based on your experience and good common sense. I
24 think that an example would demonstrate the principle:

1
2 If you were sitting here as a jury in a personal
3 injury case and in a hypothetical situation I were
4 to say that the plaintiff charges a defendant with
5 passing a stop sign on a particular corner and striking
6 the plaintiff, causing injuries;

7 Now, if Mr. Adler and myself happened to be
8 on the corner of that intersection at the time of
9 the accident, in the hypothetical situation, and he
10 had his back to the street and the stop sign were out
11 of view while I was talking with him, facing the
12 other way, the roadway, and the stop sign was in my
13 view, well, if we were both called to the stand I
14 might testify that I saw the defendant's motor vehicle,
15 let us say it was a 1976 white Cadillac, traveling
16 at 60 miles an hour and I saw it pass the stop sign
17 and strike the plaintiff. My testimony would be
18 direct evidence on the disputed issue.

19 We must first identify the disputed issue,
20 whether or not the motorvehicle passed a stop sign
21 without stopping, and I saw it and I came to court
22 and I testified on that particular issue to that effect.

23 My courtroom deputy who had his back to the
24 stop sign could not possibly testify directly on that
25 issue, but he could testify to circumstances from

1 which the jury might draw a reasonable inference,
2 based upon good common sense and experience, and if
3 he testified as follows, then I think you would
4 recognize that he is testifying to circumstances and
5 he is giving circumstantial evidence:
6

7 He might say that as he turned to his right he
8 saw defendant's car, a 1976 Cadillac, proceeding at
9 the rate of about 60 miles an hour and then he lost
10 sight of it and then when he turned to his left he saw
11 it again and that was about two or three seconds later
12 and traveling at the same speed and that it struck the
13 plaintiff.

14 I think if you were to take his testimony, if
15 you believed his testimony, it would establish the
16 fact that the defendant's motor vehicle was traveling
17 at 60 miles an hour and if he testified that about
18 150 feet later he saw it again, then you would have
19 the fact that it traveled about 150 feet over a period
20 of two or three seconds and struck the plaintiff.

21 There you have the circumstances upon which you
22 may make the same findings, if you believe the circum-
23 stances, and you could derive a fair and reasonable
24 inference from the circumstances, to wit:
25

That a motor vehicle was traveling at 60 miles

1
2 an hour, it traveled about 150 feet in two or three
3 seconds, so it couldn't possibly have stopped, and
4 that it then proceeded.

5 The law does not hold that one form of evidence
6 is of better quality than the other, it only says that
7 both on the direct and the circumstantial evidence
8 the Government is obliged to prove the guilt of the
9 defendants by proof beyond a reasonable doubt.

10 When it comes to the intention of the defendant
11 Young with reference to the issue of residence, well,
12 intention is a state of mind and no one can see that
13 and by necessity you will determine whether she changed
14 her residence from New York to California by what
15 she did, because that is some evidence. Once you
16 determine the credible evidence, you have established
17 the circumstances, then you will make your determina-
18 tion based upon circumstantial evidence as to whether
19 she changed her residence from New York to California
20 at the time indicated.

21 What is evidence?

22 Evidence consists of the sworn testimony of
23 witnesses regardless of who may have called them. It
24 includes the exhibits that are actually marked in
25 evidence, it includes facts which may have been

admitted or stipulated.

As I recall it, the defendants stipulated that the four exhibits marked in evidence, the weapons, were operable, and it includes facts which the Court judicially noticed. For example, if I were to judicially notice that a particular date of the month was on a particular day, and I don't know whether I did, but let us assume that I said August 25, 1975 was a Monday, well, that is a fact judicially noticed.

All that is in the record, that is the evidence upon which you will base your decision, and of course all the fair and reasonable inferences that your good common sense and experience lead you to, including the exhibits in evidence, and it is upon that which you will make your final determination as to the guilt or innocence of each defendant as to each crime charged.

I think it is important for you to understand what is not evidence in the case. First, the statements made by counsel in the openings and the statements and arguments made by counsel in the closing. They serve useful purposes, but they are not evidence. As I indicated to you when you first were sworn, the opening statements are aids in following the evidence that is to come, while the summations consist of a

1 review of the evidence by the lawyers, each one point-
2 ing to the evidence and arguing the evidence so that
3 your attention may be drawn to what the lawyers
4 consider the important evidence in the case;
5

6 The arguments of counsel, the Government's
7 counsel arguing that the evidence proves the guilt
8 of the defendants beyond a reasonable doubt and the
9 defendants arguments arguing to you that the Govern-
10 ment failed to prove the guilt of the defendants as
11 to any counts.

12 You may be attracted to an argument by either
13 side by the logic of it, and of course it is expected
14 that if it makes sense that you use it to help you in
15 coming to a fair decision.

16 On the other hand, if you find that the argument
17 makes no sense or is not supported by the evidence,
18 obviously there is no obligation on your part to
19 accept it. These are just arguments made to you all
20 in the hope and expectation that they will be helpful
21 to the jury.

22 Any statement made by the Court is not evidence.
23 I might say that on a few occasions I asked a question
24 of a witness; it was only intended to clarify some
25 point that confused me, and I thought it might also

1
2 confuse you. But don't pay any particular attention
3 to anything the Court asks just because the Court
4 asked it. I am just attempting to fulfill the function
5 that I indicated, and that is to make a fair trial and
6 if I thought the question might clarify a point, I
7 did it for that purpose and only for that purpose.

8 At times I struck matters from the record. Now
9 as I directed the Court Reporter to physically strike
10 it from his record, so you are directed to strike it
11 from your recollection and your consideration of the
12 case. Once it is stricken, it is not a part of the
13 record, and again, you must decide this case on the
14 evidence, on the record.

15 At times I sustained an objection to questions
16 that the lawyers asked, and on those occasions you
17 may not speculate on what the answer might have been
18 had I permitted the witness to answer, and that is
19 for the same reason: The witness did not answer, the
20 testimony did not get into the record, and you are not
21 at liberty to speculate as to what it might have been
22 had the witness been permitted to answer.

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(Continued on next page.)

1
2 THE COURT: The weight of the evidence is not
3 necessarily determined by the number of witnesses
4 testifying on either side. The weight of the evidence
5 is considered in the light of the quality of the
6 testimony, the kind of testimony, whether it is
7 believable.

8 I charged you on an inference and I charged you
9 on a presumption and I would like to tell you what the
10 difference is:

11 An inference is a conclusion which reason and
12 common sense lead the jury to draw from the facts
13 which have been established by the evidence in the
14 case. Drawing an inference is discretionary, it is
15 based on good common sense and experience.

16 A presumption, on the other hand, is a
17 conclusion which the law requires a jury to make and
18 continues only so long as it is not overcome or
19 outweighed by evidence in the case to the contrary.
20 But, unless and until the presumption is so outweighed,
21 the jury is bound to find in accordance with the
22 presumption. An example of that, of course, is the
23 presumption of innocence.

24 You, the jurors, are the sole judges of the
credibility of the witnesses, which means the

believability of the testimony and the weight their testimony deserves.

Scrutinize the testimony given and the circumstances under which each witness testified and every matter in evidence which tends to show whether a witness is worthy of belief.

Consider each witness' intelligence; consider his motive and state of mind, why is the witness testifying;

Consider the witness' demeanor and manner while on the witness stand, is the witness testifying directly, is the witness evasive;

Consider the witness' own ability to observe the matters to which he has testified, whether he shall have impressed you as having an accurate recollection of those matters;

Consider the relationship that the witness might bear to either side of the case, the manner in which the witness might be affected by the verdict;

Consider the extent to which if at all each witness is either supported or contradicted by other evidence in the case. If you find that a witness testified before you falsely under oath as to a material fact intentionally, you have the right, if you

1 wish, to disregard all of that witness' testimony on
2 the theory that the witness is unworthy of belief. On
3 the other hand, you have the right to accept so much of
4 the testimony as you understand and determine is
5 believable.
6

7 That principle underscores the wide discretion
8 the jury has in weighing the credibility, the
9 believability of the testimony.

10 The law does not compel a defendant in a
11 criminal case to take the witness stand and testify.
12 No presumption of guilt may be raised and no unfavorable
13 inference of any kind may be drawn in the failure of a
14 defendant to testify. A defendant as previously charged
15 may rely on the failure of the Government to prove its
16 case. It would be improper for you to discuss the
17 failure of a defendant to testify during your
18 deliberations.

19 Now if the circumstances allow for two opposite
20 and conflicting interpretations, one of which is
21 consistent with innocence, and the other of which is
22 consistent with guilt, you are required to decide such
23 conflict in the defendants' favor by accepting the
24 conclusion as to innocence and rejecting the conclusion
25 as to guilt.

1
2 Again I remind you that this principle in no
3 way lightens the Government's burden to prove guilt by
4 proof beyond a reasonable doubt.

5 Neither accused is charged with obtaining any
6 firearm by means of making any false or misleading
7 statement, or by misrepresenting an identification to
8 any firearm dealer.

9 I am about to read the indictment, but before I
10 do so, again I charge you that the allegations which
11 I am going to read to you are in no way to be
12 considered proof as to the truth of the charges and
13 they have no evidentiary value at all. The only
14 purpose is to bring the defendants into Court to answer
15 the charges, and the defendants have answered them by
16 saying Not Guilty.

17 Now the odd numbered counts charge each
18 defendant with the transportation into the State of
19 New York from outside the state while the defendant
20 charged was a resident of the State of New York. The
21 even numbered counts, 2, 4, 6 and 8, charge the
22 defendant Chin, as the counts now stand, with receiving
23 a weapon that was brought into the State of New York
24 from out of the State of New York at a time when he was
25 a resident of the State of New York.

1
2 If you look at your Memorandum of Verdict, you
3 will notice that I took only a small portion of the
4 charge in the indictment from the counts, and as I
5 say, hopefully, when you look at the counts in the
6 Memorandum of Verdict you will recall the entire count
7 as I charge it, as I read it to you.

8 "Count One:

9 "From on or about July 29, 1975 to October 4,
10 1975, the exact dates being unknown to the Grand Jury,
11 within the Eastern District of New York and elsewhere,
12 the defendants KENNETH RAYMOND CHIN and ELIZABETH
13 JANE YOUNG, now known as "Elizabeth Jane Young Chin,"
14 both residing at 925 Union Street, Brooklyn, New York,
15 Apartment 4-B, and not being licensed importers,
16 dealers, manufacturers or collectors, did knowingly
17 and willfully transport, from California to New York,
18 a firearm, to wit: An Armalite, AR-180, .223
19 caliber, semi-automatic rifle, serial number
20 S-12585 which firearm had been purchased or
21 otherwise obtained in California by the defendants."

22 In violation of Title 18, United States Code,
23 Sections 922(a)(3) and 2.

24 "Count Two.

25 "From on or about July 29, 1975 to October 4,

1975, the exact dates being unknown to the Grand Jury, within the Eastern District of New York and elsewhere, the defendants KENNETH RAYMOND CHIN and ELIZABETH JANE YOUNG, now known as "Elizabeth Jane Young Chin", both residing at 925 Union Street, Brooklyn, New York, Apartment 4-B, and not being licensed importers, dealers, manufacturers or collectors, did knowingly and willfully receive in New York, a firearm, to wit: an Armalite, AR-180, .223 caliber, semi-automatic rifle, serial number S-12585 which firearm had been transported from California to Brooklyn, New York by the defendants, after it had been purchased or otherwise obtained by them in California."

In violation of Title 18, United States Code, Sections 922(a)(3) and 2.

"Count Three:

"From on or about August 12, 1975 to October 4, 1975, the exact dates being unknown to the Grand Jury, within the Eastern District of New York and elsewhere, the defendants KENNETH RAYMOND CHIN and ELIZABETH JANE YOUNG, now known as "Elizabeth Jane Young Chin", both residing at 925 Union Street, Brooklyn, New York, Apartment 4-B, and not being licensed importers, dealers, manufacturers or collectors, did knowingly

1 and willfully transport, from California to New York,
2 a firearm, to wit: an Armalite, AR-180, .223 caliber,
3 semi-automatic rifle, serial number S-12590 which fire-
4 arm had been purchased or otherwise obtained in
5 California by the defendants."

6 Title 18, United States Code, Section 922(a)(3)
7 and 2.

8 "Count Four:

9 "From on or about August 12, 1975 to October 4,
10 1975, the exact dates being unknown to the Grand Jury,
11 within the Eastern District of New York and elsewhere,
12 the defendants KENNETH RAYMOND CHIN and ELIZABETH
13 JANE YOUNG, now known as "Elizabeth Jane Young Chin",
14 both residing at 925 Union Street, Brooklyn, New York,
15 Apartment 4-B, and not being licensed importers,
16 dealers, manufacturers or collectors, did knowingly
17 and willfully receive in New York, a firearm, to wit:
18 an Armalite, AR-180, .223 caliber, semi-automatic
19 rifle, serial number S-12590 which firearm had been
20 transported from California to Brooklyn, New York by
21 the defendants, after it had been purchased or
22 otherwise obtained by them in California."

23 Title 18, United States Code, Section 922(a)(3)
24 and 2.

"Count Five:

"From on or about July 1, 1975 to October 4, 1975, the exact dates being unknown to the Grand Jury, within the Eastern District of New York and elsewhere, the defendants KENNETH RAYMOND CHIN and ELIZABETH JANE YOUNG, now known as "Elizabeth Jane Young Chin", both residing at 925 Union Street, Brooklyn, New York, Apartment 4-B, and not being licensed importers, dealers, manufacturers or collectors, did knowingly and willfully transport, from California to New York, a firearm, to wit: an Armalite, AR-7, .22 caliber, semi- automatic rifle, serial number 89474 which firearm had been purchased or otherwise obtained in California by the defendants."

In violation of Title 18, United States Code, Sections 922(a)(3) and 2.

"Count Six:

"From on or about July 1, 1975 to October 4, 1975, the exact dates being unknown to the Grand Jury, within the Eastern District of New York and elsewhere, the defendants KENNETH RAYMOND CHIN and ELIZABETH JANE YOUNG, now known as "Elizabeth Jane Young Chin", both residing at 925 Union Street, Brooklyn, New York, Apartment 4-B, and not being licensed importers, dealers,

1 manufacturers or collectors, did knowingly and
2 willfully receive in New York, a firearm, to wit: an
3 Armalite, AR-7, .22 caliber, semi-automatic rifle,
4 serial number 89474 which firearm had been transported
5 from California to Brooklyn, New York by the defendants,
6 after it had been purchased or otherwise obtained by
7 them in California."
8

9 Title 18, United States Code, Section 922(a)(3)
10 and 2.

11 "Count Seven:

12 "From on or about July 1, 1975 to October 4,
13 1975, the exact dates being unknown to the Grand Jury,
14 within the Eastern District of New York and elsewhere,
15 the defendants KENNETH RAYMOND CHIN and ELIZABETH
16 JANE YOUNG, now known as "Elizabeth Jane Young Chin",
17 both residing at 925 Union Street, Brooklyn, New York,
18 Apartment 4-B, and not being licensed importers,
19 dealers, manufacturers or collectors, did knowingly
20 and willfully transport, from California to New York,
21 a firearm, to wit: an M-1, .30 caliber Carbine, serial
22 number 5487136 which firearm had been purchased or
23 otherwise obtained in California by the defendants."
24

25 In violation of Section 18, United States Code,
26 Section 922(a)(3) and 2.

1 [780]

Charge

A-86

2 "Count Eight:

3 "From on or about July 1, 1975 to October 4,
4 1975, the exact dates being unknown to the Grand Jury,
5 within the Eastern District of New York and elsewhere,
6 the defendants KENNETH RAYMOND CHIN and ELIZABETH
7 JANE YOUNG, now known as "Elizabeth Jane Young Chin",
8 both residing at 925 Union Street, Brooklyn, New York,
9 Apartment 4-B, and not being licensed importers,
10 dealers, manufacturers or collectors, did knowingly
11 and willfully receive in New York, a firearm, to wit:
12 an M-1, .30 caliber Carbine, serial number 5487136
13 which firearm had been transported from California to
14 Brooklyn, New York by the defendants, after it has been
15 purchased or otherwise obtained by them in California.

16 In violation of United States Code, Section
17 922(a)(3) and 2.

18 (Continued next page.)
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Eight times after reading each count I referred to Title 18, United States Code, Section 922(a)(3). The Congress decides what the criminal law is, what activity constitutes criminal activity, what criminal activity constitutes a crime, and so the Congress in 1968 passed the Federal Gun Control Act, and parts of that Act are intended through congressional action to closely supervise the manufacture, sale and transportation of certain weapons.

The charges in these eight counts are based on the section referred to, and the pertinent part of the section is this, and it says:

"It shall be unlawful for any person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to transport into or receive in the State where he resides...any firearm purchased or otherwise obtained by such person outside that state..."

So that this section in effect charges that it is a crime for a resident of New York to transport into New York State or receive in New York State a weapon that was transported into New York State.

So that residency is an important issue.

If the Government failed to prove that at the

1 time the particular weapon was transported into the
2 State of New York, the defendant Young was a
3 resident of the State of New York, it hasn't proven
4 its case. If she purchased a weapon in the State of
5 California while she was a resident of the State of
6 California, as I will define it, then she did not
7 commit a crime under the section, and you must find
8 her not guilty even though she transported it into
9 the State of New York while she was a resident of the
10 State of California. I will say more about that in
11 a little while.
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13 (Continued on next page.)
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On the other hand, if you find this situation, that the defendant Young was a resident of California at the time she transported a weapon into the State of New York -- and I make no finding that she transported any weapon into the State of New York -- that's for you to determine and you must determine whether the Government proved that beyond a reasonable doubt -- but assuming that you find that she transported a weapon into the State of New York and at that time she was a resident of California but at that time the defendant Chin was a resident of the State of New York and that he aided and abetted -- as I will define that later -- the transportation into the State of New York and that he received a weapon while he was a resident of the State of New York that was transported from outside the State, then the mere fact that you must find the defendant Young not guilty by reason of the failure to prove residence does not exculpate Mr. Chin because he doesn't benefit by her non-residence.

In order to prove the accused guilty of counts 1, 3, 5 and 7, which are the counts charging transportation by a resident of the State of New York of a weapon into the State of New York, the following

essential elements of the crimes must be proven:

One, that the accused, at the times mentioned, was not a licensed importer, manufacturer, dealer or collector of firearms;

Two, that on or about the dates alleged the defendant purchased or otherwise obtained a firearm described in the particular count of the indictment;

Three, that on or about the dates alleged the defendant knowingly transported the firearm into the State of New York and,

Four, that at the time the defendant transported the firearm into the State of New York the defendant was a resident of the State of New York.

The Government must prove all those four elements by proof beyond a reasonable doubt.

Now, thus far, I have not yet touched on the proof in the record or the lack of proof in the record and I will say now there is no proof in the record that the defendant Chin transported any weapon into the State of New York.

The proof is clear in the record that he was not in California. However, I will come to the aiding and abetting statute and you will consider whether he violated Section 2 which, I repeated, eight times

1 and that is the aiding and abetting statute.

2
3 With reference to the essential elements of
4 Counts 2, 4, 6 and 8 which involve only the defendant
5 Chin, in addition to proving that the firearm was
6 actually transported from outside the State and into
7 the State of New York, the Government must prove
8 beyond a reasonable doubt that the accused, Chin, at
9 the times mentioned was not a licensed importer,
10 manufacturer, dealer or collector of firearms;

11 Two, that the firearm was transported into
12 the State of New York in violation of 18 U.S.C.
13 Section 922(a) (3); and

14 Three, that on or about the dates alleged in
15 each count the defendant Chin knowingly received
16 the said firearm.

17 When we use the term, "knowingly," we mean that
18 the defendant must be aware of what he was doing in
19 order to charge him criminally.

20 In the case of the defendant Young, on knowing
21 transportation, it means that the Government must
22 prove beyond a reasonable doubt that the defendant
23 Young knew that she was carrying a firearm or caused
24 the firearm to be transported into the State of
25 New York.

26 The Government doesn't have to prove precisely

1 that she physically carried the firearm into the State
2 of New York but either that she did or caused someone
3 else to do it and that she knew that it was a firearm;
4 that it wasn't by mistake, accident or inadvertance --
5 that it wasn't a pure accident.
6

7 The hypothetical, for example, might be that
8 somebody sticks a firearm into somebody's baggage
9 while they are crossing into the State of New York and
10 he, not knowing he has a firearm, carries it in.
11 That is not a violation of the statute.

12 However, the Government does not have to prove
13 that the defendant was aware that carrying the firearm
14 into the State of New York was a violation of the
15 Federal Gun Control Act or of Section 922(a)(3).

16 When we come to the question of receiving,
17 the knowing receipt in the State of New York of a
18 firearm that was transported into the State of
19 New York, an individual is not chargeable with just
20 receiving a firearm. The Government must prove that
21 the defendant was aware that the firearm was transported
22 into the State of New York from outside the State of
23 New York.

24 Again, the Government does not have to prove
25 that the defendant charged in this case, Chin, was

aware that the receipt of that firearm transported into the State from outside violated the Federal Gun Control Act or that it was a violation of the section, pertinent section, 922(a)(3).

Now, receipt means coming into possession of or getting or acquiring from a source outside oneself. In other words, in order to receive, somebody has to give it.

I'd like to give you the statutory definitions of some of the terms that we used.

Section 921, Subdivision (3) defines the term "firearm" as follows:

The term firearm means any weapon which will or is designed to or may readily be converted to expel a projectile by the action of an explosive.

The next definition is "importer", Subdivision (9):

The term "importer" means any person engaged in the business of importing or bringing firearms or ammunition into the United States for purposes of sale or distribution; and the term "licensed importer" means any such person licensed under the provisions of this chapter.

Subdivision (10):

The term "manufacturer" means any person engaged in the manufacture of firearms or ammunition for purposes of sale or distribution; and the term "licensed manufacturer" means any such person licensed under the provisions of this chapter.

Subdivision (11):

The term "dealer" means any person engaged in the business of selling firearms or ammunition at wholesale or retail, any person engaged in the business of repairing firearms or any person who is a pawnbroker. The term "licensed dealer" means a dealer who is licensed under the provisions of this chapter.

Subdivision (13):

The term "collector" means any person who acquires, holds or disposes of firearms or ammunition as curios or relics and the term "licensed collector" means any such person licensed under the provisions of this chapter.

There are other definitions. I want to make sure I defined every term I used and at the same time I don't want to give you any useless definitions.

(Continued on next page.)

[789]

Charge

THE COURT: (Continuing.) Now, there is testimony in the record as to the possible use of the weapons as weapons intended to be used for sport or hunting.

I charge you that the purpose for obtaining the weapons has nothing to do with the case at all.

The same is true as to statements, as I recall it, made by counsel that similar weapons could be purchased in any sporting goods store in the State of New York. That has nothing whatever to do with this case.

On the question of the filing of the notice of sale, called disposition slips and the applications for permits permitting the possession of the weapons within the State of New York, the mere fact that an accused gets a permit for a weapon that is unlawfully transported into the State of New York or unlawfully received in the State of New York does not in any way excuse the federal crime.

Now we come to the charge of aiding and abetting the transportation of the weapons.

As I said, there is no proof in the record that the defendant Chin transported any weapon.

The same title of the criminal statute as codified

contains Section 2 of Title 18 and it provides this:

whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal.

(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States is punishable as a principal.

So, the defendant Chin here is charged with aiding and abetting the transportation of the weapon or weapons.

In order to aid and abet another to commit a crime it is necessary that the accused willfully associate himself in some way with the criminal venture and willfully participate in it as he would if it were something he wished to bring about. In other words, that he do it knowingly and voluntarily and not by pure accident.

An act is willfully done if done voluntarily and intentionally and with specific intent to do that which the law forbids.

Of course, you may not find an accused guilty of aiding and abetting the commission of a crime unless you find that the crime was committed, that all the

essential elements of the crime were established.

Now, the only variation here, as I say, in the transportation -- even if you find that the defendant Young was not a resident of the State of New York and for that reason she did not commit the crime charged--is that Mr. Chin can be found guilty if the Government has proved all the other elements of the crime charged and proved that defendant Chin was a resident at the time the weapon was transported into the State of New York and of course, the Government must prove that he did something; participated knowingly and willfully as an aider and abettor in the participation of the crime.

There is no evidence, as I said before, that the defendant Chin in any way participated in the transportation of any of the weapons into the State of New York.

There is evidence in the case that on October 4th, 1975 federal agents searched apartment 4-B at 925 Union Street, Brooklyn pursuant to a search warrant and seized the four weapons that are made the subject of the eight counts in this indictment.

If you find from the evidence of that seizure that the defendant Chin was in possession of the weapons and/or if you find that the defendant Young

1 was in possession of the weapons then you may, if
2 you feel that the inference is a fair inference,
3 based on good common sense and experience, then you
4 may draw certain inferences.

5
6 As I charged you before, the jury is not
7 required to make the inferences I referred to but if
8 you think it makes good sense to you that based on
9 possession and all the other facts and circumstances
10 in the case, then of course, you may draw them.

11 First, let me lay aside the inferences that
12 I say you may draw from possession and tell you
13 something about possession.

14 The law recognizes tow kinds of possession;
15 actual and constructive possession.

16 A person who knowingly has direct physical
17 control over a thing at a given time is in actual
18 possission.

19 I am in actual possession of these glasses.
20 I hold them in my hands.

21 If they were in my home I would still have
22 dominion and control over the glasses but I wouldn't
23 have them in actual possession. I'd have them in
24 constructive possession.
25

1 The law recognizes also that possession may be
2 sole or joint.

3 The glasses may be in the possession of one
4 party or in the possession of more than one party.

5 One party may have actual possession while the
6 other party may have constructive possession -- may
7 have the right just as much as the party who has
8 actual possession -- to possession of the thing.

9 Two people may, if you can think of it jointly,
10 own an automobile. One may take it out on a Sunday.
11 He is in actual possession. The other may have the
12 right to it and it may be jointly held.

13 On the other hand, the two people who own the
14 car may be in the car itself, jointly-owned and
15 they may feel they jointly possess it.

16 People who have a business, partners, may have
17 a warehouse and own certain articles in it, both
18 understanding they both jointly own it and they jointly
19 possess it even though neither of them have actual
20 possession.

21 But for these purposes it doesn't matter as to
22 the type of possession. If you find from the evidence
23 in this case beyond a reasonable doubt that the
24 weapons made the subject of the counts in this
25

1 indictment were in the knowing possession of the
2 defendants and you find that the particular weapon --
3 referring to the ones described in the counts -- the
4 four weapons described in the eight counts of the
5 indictment -- if you find that the weapons were brought
6 into the State of New York from outside the State of
7 New York, then you may infer from your finding of
8 possession that the accused participated in the
9 unlawful transportation.
10

11 To demonstrate, the defendant Young, through
12 Ms. Piel, came to you and said, Well, I
13 transported the weapon made the basis of the counts
14 in Counts 1 and 2 from California into New York. At
15 the time I was a resident. Well, Mr. Chin is not bound
16 by that statement.

17 But, if you find that the weapon was
18 transported from California into New York you may
19 infer from that possession that the defendant Chin
20 participated in the transportation of that weapon.

21 Now, the participation doesn't have to be
22 physically bringing the weapon into the State of
23 New York.

24 What I am saying is not inconsistent. As I
25 said before, there is no proof at all in the record that

1 the defendant Chin was in California.

2 If you find that the defendant Chin came into
3 possession of that weapon soon after it was imported
4 into New York you may -- but you are not required to
5 -- infer from such possession not only that he
6 participated in the unlawful transportation of the
7 weapon -- if you find it unlawful -- but that he
8 received the weapon and that when he received the
9 weapon he knew that the weapon was unlawfully
10 transported into the State of New York.
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12 (Continued next page.)
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[796]

Charge

1 THE COURT: (Continuing.) Now, in determining
2 the strength of the inference or whether you should
3 make the inference at all take into consideration the
4 time between when the weapon was allegedly transported
5 into the State of New York and the time that the
6 weapon was seized on October 4, 1975.

7 Obviously, if the time element is short the
8 inference is stronger.

9 For example, if something happens on Monday
10 and on Tuesday it is found in the possession of the
11 accused, the inference that he knew about what happened
12 on Monday is stronger than if the incident happened in
13 one month and it was in the accused's possession the
14 next month, for example 30 days later.

15 Of course, a defendant is never called upon to
16 explain anything or offer any evidence by explanation
17 that may show his lawful possession or show that he
18 did not transport the gun or did not receive it or
19 received it not knowing that it was transported.

20 You may examine the testimony in the case and
21 everything that happened in this case is in the record
22 and the record may explain that in fact he had no
23 part in the transportation, did not receive the weapon
24 in New York and/or did not know that the weapon was
25

1 transported into the State of New York from outside
2 the State of New York.

3 So, if the record explains his possession as
4 innocent you have no right to draw the inference that
5 he participated in the transportation or knew that
6 the weapons were brought into the state or any other
7 unfavorable inference.

8 Now we come to the definition of residence and
9 you will be called upon to decide the issue as to
10 each defendant.

11 Residence as used in the statute is defined in
12 legal terms as domicile. Taht doesn't help you much
13 -- saying it's domicile but I want the record to show
14 that I entend charging the jury that as used in this
15 statute residence is domicile.

16 You cna have any number of homes. You can have
17 a home at the beach and if you are rich enough you
18 might have a home in Monaco and you can have a home
19 in Florida and an apartment in New York. But, you can
20 only have one residence, as I am defining it, for the
21 purpose of this statute.

22 Residence, as used in this statute, means the
23 place where the individual dwells, regarding it as
24 his or her home as distinguished from the other places.

[797a]

Charge

A-103

1 It is the place where one intends to live for
2 an indefinite time. The individual in his or her own
3 mind doesn't say well, I'm going to be here for three
4

(Continued next page.)

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1 days and then I'm going to leave the place and never
2 come back. That wouldn't be a residence.

3 It doesn't matter if the party lived there for
4 20 years. If the party at the particular moment said
5 well, I'm leaving next week and going someplace else,
6 that's an intention to abandon the residence and take
7 up a new residence. It is not yet acquiring the new
8 residence.

9 Domicile is usually the place where you have
10 your personal effects, your belongings, your household
11 goods, your valuables. It is the place where you
12 regularly receive mail. It doesn't matter what the
13 form of the dwelling is. It might be a hotel room
14 that you regard as your permanent residence; it might
15 be an apartment, a rental apartment; it might be a
16 cooperative apartment or a condominium; it may be a
17 little hut and it may be a twenty room house.

18 In this case there is evidence in the record
19 that the defendant Young said she was going home; that
20 she went to the home or residence of her father and
21 mother in Huntford or some such place in California --
22 I don't remember -- I see the foreman is ready to
23 tell me but it doesn't matter -- you see, you remember
24 things better than I so don't count on my recollection
25

1 because yours is probably better -- in approximately
2 the middle of the summer of 1975; remained there
3 approximately ten days and then went to some address,
4 as I recall, on 6th Street in Los Angeles and then
5 came back to Brooklyn to 925 Union Street.
6

7 In determining the defendant Young's residence
8 during that period of time, you must determine whether,
9 when she left 925 Union Street, Brooklyn, she actually
10 gave up, surrendered her home and went to California
11 never intending to return to 925 Union Street and
12 intending to go to California and remain there for
13 an indefinite period of time.

14 The significant evidence as to whether or not
15 the defendant gave up her residence at 925 Union
16 Street is whether she took her belongings with her.

17 Evidence that an individual packed up and
18 moved all of his or her belongings would be very strong
19 evidence -- not determinative but strong evidence --
20 that he or she gave up his or her residence.

21 Of course, leaving a residence and intending
22 to leave behind all personal effects and move out of
23 the state -- if that is shown -- then that too, is
24 strong evidence. A party doesn't have to physically carry
25

1 everything. So, you decide whether the defendant
2 Young abandoned, gave up, surrendered her residence
3 in Brooklyn. For before you can acquire a new residence,
4 as in this case the evidence must show that, Miss Young,
5 gave up her then current residence in Brooklyn and went
6 to California intending to reside for an indefinite
7 length of time in California, and resided in California
8 with that intention.

9
10 Now obviously, a brief sojourn intending to
11 return to a residence is neither abandoning nor giving
12 up the old residence nor establishing a new one.

13 However, the fact question remains for you to
14 decide and in the context of this case it is the
15 Government that must prove residence at the time of
16 the transportation.

17 So, with all the evidence of going to California,
18 the statements made by the defendant Young -- you decide
19 whether the Government proved beyond a reasonable doubt
20 that at the time of the transportation the defendant
21 Young was a resident of the State of New York.

22 Now, I will shortly excuse you to start
23 deliberations on the matter. I want to make sure I
24
25

covered everything.

You understand that the jurors are to decide this case solely on the evidence, free of all bias, prejudice and sympathy. Each juror must decide the case for himself and herself and when all twelve jurors agree on the same verdict, then we have a verdict and at that time the foreman will report to me that the jury has arrived at a verdict.

All I want in the note is the statement the jury has a verdict or has arrived at a verdict. Do not tell me what the verdict is and do not tell me how you stand at any particular time during your deliberations. It would be improper for you to write the verdict out and give it to me. The first time I should hear the verdict is when the lawyers hear the verdict and that is in open Court.

If I have your note saying you have a verdict I will call you into the Courtroom and I will ask you to stand and ask you what your verdict is.

I will read the counts. I will say, in United States against Chin and Young, as to Count 1, how do you find the defendant Chin, guilty or not guilty; how do you find the defendant Young, guilty or not guilty and I will go through all the other counts and the foreman will

1 tell me and then I will ask Juror No. 2 if he heard the
2 pronouncement of the verdict and if so, if he agrees
3 with it and if he says yes, then I will ask Juror No.
4 3 and 4 and so forth down the line to Juror No. 12 and
5 if all agree in open court that becomes the verdict
6 of the jury in the case.
7

8 During your deliberations you may want to hear
9 testimony or see exhibits. Just write a note saying
10 you'd like to hear testimony or see the exhibits and
11 I will send them to you.

12 The jury process is a deliberative process.
13 You think about it; you talk about it; you discuss the
14 evidence.

15 It would be improper for any juror to come
16 into the jury room and in effect, abandon his or her
17 obligation. You know, they call me Good Time Charlie
18 or Get Along With Everybody Millie and I'll go along
19 with anything you say. That's wrong.

20 It is just as wrong for any juror to take an
21 intransigent position and say, I've got this case
22 decided and I won't talk to any of the other jurors.

23 If you have arrived at a tentative verdict at
24 any time and through your exchange of views you find
25 that the view you originally had was wrong, that

1 the other views suggested by the other jurors, based
2 on the testimony, constitute a proper verdict then of
3 course, it is quite obvious that you should be in a
4 position where you can change your views -- all through
5 arguing your point and all through considering the
6 evidence.

7 Now, I will ask you to retire to the jury room.

8 Please do not start your deliberations. I want
9 to talk to the lawyers and then I will call you back
10 into the Courtroom once more.

11 Oh, I might say that these Memorandum of
12 Verdicts, you can disfigure them, write on them, make
13 notes. I will just give the foreman an extra copy
14 and I would like one copy signed by you, that's all,
15 for the record.

16 (Jury excused.)

17 (Continued next page.)
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[804]

THE COURT: Mr. Levin-Epstein, do you have any exceptions or objections to the charge?

MR. LEVIN-EPSTEIN: Your Honor, the only suggestion that I have is that the charge that you gave the jury with respect to the matter relating to Mr. Yanagita and Mr. Kondo, that it be balanced; I don't object to the charge that you gave per se, but that it merely be balanced to charge the jury that -- quite frankly, I am at a loss how to phrase it at this point. I will simply make the record clear that I have no objection to the charge as you gave it, I recognize the Court's quandary with respect to the matter, and I recognize and respect the Court's evaluation of what is obviously a difficult problem. I would merely ask the Court to consider a balancing charge to the jury with respect to that point that the Government -- that there was no -- that this was merely a part of the burden of proof in the sense that the Government need only make out the elements of the crime in whatever way it be done beyond a reasonable doubt and that the jury be told that it need not be done by any particular form of proof.

THE COURT: No, I think I have sufficiently charged, I decline to so charge.

MR. LEVIN-EPSTEIN: Very well, your Honor.

[805]

1 Your Honor, the rest of the charge is
2 satisfactory to the Government.

3 THE COURT: The lunches are here so I am going
4 to suggest to the jury that they have their lunch and
5 I will tell them to bring the lunches in and that they
6 might be through with it in half an hour.

7 Yes, Mr. Leibowitz.

8 MR. LEIBOWITZ: Your Honor.--

9 MR. LEVIN-EPSTEIN: For the record, the rest of
10 the charge is satisfactory.

11 THE COURT: All right.

12 MR. LEIBOWITZ: After hearing the Court's charge
13 and considering the law of this case I believe that as
14 in the case of the defendant Young, so likewise in the
15 case of the defendant Kenneth Chin, he cannot be
16 convicted of both receiving and importing, and I don't
17 think that the charge of importation and receiving can
18 jointly be presented to the jury in this case as to
19 Kenneth Chin.

20 THE COURT: As I read the Hanawitch, strangely
21 enough I think he can, but that is a point you can
22 argue if he is convicted.

23 MR. LEIBOWITZ: I take exception also to the
24 Court's charge that it is the lawyer's duty to bring in
25 the evidence on both sides, in fact the defense counsel

[806]

and the defendant have no duty to bring in any evidence.

THE COURT: I don't think I said a duty to bring in the evidence, I don't think I meant bringing in the evidence, but you certainly brought out evidence on cross-examination.

Certainly it is the duty of the lawyers to develop the evidence.

Would you like me to say that?

MR. LEIBOWITZ: Well, I would simply say if it is curable and ask that the Court --

THE COURT: Don't you think it is curable, Mr. Leibowitz?

MR. LEIBOWITZ: Do I think it is curable?

THE COURT: Yes, yes, yes.

MR. LEIBOWITZ: I would have to ask the jury that, your Honor, I don't know.

THE COURT: I see.

MR. LEIBOWITZ: But if it were going to be cured, it would be proper to say that -- well, you emphasize that the defense has no burden of proof and no burden of presenting of evidence.

THE COURT: Go ahead, anything else.

MR. LEIBOWITZ: And that the Government has the sole burden.

[807]

Now the defendant Chin -- may I have just one moment?

(At this point Mr. Leibowitz conferred with Ms. Piel.)

MR. LEIBOWITZ: Your Honor, I think inadvertently you stated that there were twenty-four counts in the indictment, in effect that is that there were twenty four charges, and I think it is really twenty --

THE COURT: I think it is sixteen against Chin and eight against Young, that makes it twenty-four.

MR. LEIBOWITZ: Sixteen against --

THE COURT: Wait a while, maybe I am wrong.

Yes, aren't there eight counts?

I am sorry, you are absolutely right.

There are twelve counts, twelve charges against Chin and four against Young, twelve. I don't know where I got sixteen and eight, I added sixteen and eight and got twenty-four.

MR. LEVIN-EPSTEIN: Your Honor --

THE COURT: Each one was charged with two counts, that is sixteen counts.

MR. LEVIN-EPSTEIN: All together.

THE COURT: Four counts were knocked out, which makes it twelve.

You are right.

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MR. LEIBOWITZ: This is a technical exception,
your Honor, the Court stated to the jury there was a
stipulation by the defendants that admitted that the
firearms, which are the Government exhibits, were
operable. What we stipulated to is that the firearms
under the statute --

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THE COURT: All right --

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MR. LEVIN-EPSTEIN: Your Honor, may I take
exception to that argument?

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I made it explicitly clear, right to the point,
I was very careful with the Court. You may recall it
was at the moment when Detective Simmons was on the
stand I asked if they were willing to stipulate to the
full testimony of what Detective Simmons would have
testified to and it was that the guns were operable --

16
THE COURT: Do you have a transcription?

17
MR. LEVIN-EPSTEIN: Yes, I do.

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THE COURT: Then let us read it, let us look at
it.

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22
MR. LEIBOWITZ: The reason it is technical is
that I simply mean the statute doesn't say operable, I
think --

23
THE COURT: It really doesn't matter.

24
25
MR. LEIBOWITZ: (Continuing.) Operable or
capable --

[809]

THE COURT: I would think that you would have conceded they were firearms.

MR. LEIBOWITZ: We did.

THE COURT: I think that would be the concession, but let us see what you said.

Operable may not be as broad as there being firearms, they could be operable water guns.

What is the next thing.

MR. LEIBOWITZ: The next one, your Honor, is that the Court charged the jury that by reference to the availability of firearms in New York was irrelevant and I take exception to that because the jury should be permitted to consider that the availability of weapons in New York --

THE COURT: I did not even say that, I didn't say it was irrelevant, I was very careful about that, I said that if the federal law was violated the mere fact that they could have been bought in New York or I think I said that where the permit was issued by the City of New York or a disposition slip was filed, that does not answer the charge, it does not excuse the federal violation.

MR. LEIBOWITZ: I am referring to the first part of it, not the disposition slip part.

THE COURT: I thought I had lumped them together,

1 if I didn't you tell me what is wrong.

2 MR. LEIBOWITZ: I am referring to the fact that
3 the jury should be able to consider that there would
4 be no motive, no reason for the defendant Chin, or for
5 that matter for Young, particularly for the defendant
6 Chin, to bring or facilitate weapons in from outside of
7 New York.

8 THE COURT: I don't know whether that is a
9 reason or not, I can suspect any number of reasons,
10 but that is not in the case, either.

11 MR. LEIBOWITZ: Your Honor told them they had no
12 right to consider that.

13 THE COURT: That is right, I still say so, the
14 mere fact they can be bought in New York --

15 MR. LEIBOWITZ: I take exception to it.

16 MR. LEVIN-EPSTEIN: Your Honor, I found the
17 portion that I think the Court is interested in.

18 THE COURT: What do you say was said.

19 MR. LEVIN-EPSTEIN: Page 360 through 364 of the
20 record.

21 THE COURT: 360.

22 MR. LEIBOWITZ: Yes, your Honor.

23 MR. LEVIN-EPSTEIN: Yes, your Honor.

24 THE COURT: 360.

25 MR. LEVIN-EPSTEIN: Directing the Court's

1 attention specifically to Page 19 -- excuse me, Line
2 19 of Page 361, during the course of the colloquy I
3 indicated to the Court:

4 "If I can get a stipulation of the firearms are
5 operable or capable of being operable --"

6 Then the Court went on to read the statute and
7 then --

8 THE COURT: I mean what did I say to the jury.

9 MR. LEVIN-EPSTEIN: I don't know what you said
10 to the jury, I don't have the record of that, your
11 Honor.

12 THE COURT: Well, when the jury came back --

13 MR. LEVIN-EPSTEIN: I am sorry, your Honor, I
14 misunderstood what you wanted me to look for.

15 "MR. LEIBOWITZ: We are prepared to stipulate
16 that these firearms conform to the definition given."

17 And I then read the statutory definition --

18 I said:

19 "And that element of the statute is satisfied?

20 "THE COURT: You say, conforms to the definition
21 of the statute. That means, Mr. Leibowitz is saying --
22 and I'm emphasizing the point that the defendants are
23 interested in -- any weapon which will or is designed
24 to or may readily be converted to expel a projectile.

25 "MS. PIEL: Right."

[812]

That to means, your Honor, operable.

MR. LEIBOWITZ: Your Honor, perhaps I should withdraw that exception because my only reference is perhaps too exacting, it says they are operable, however --

THE COURT: Let us see what I said to the jury, let us see what I said to the jury.

MR. LEVIN-EPSTEIN: Page 365, your Honor.

THE COURT: I said this:

"In lieu of this witness' testimony the defendants have conceded that all four objects on counsel table, which are exhibits numbered --

"MR. LEVIN-EPSTEIN: 3, 4, 5 and 13 --

"THE COURT: (Continuing.) -- of firearms within the meaning of the statute and the statutory definition as it relates to these exhibits is as follows:

"Firearm means any weapon including a starter gun which willor is designed to or may readily be converted to expel a projectile by the action of an explosive.

"The defendants concede that these four exhibits come within the statutory definition of firearms.

"Is that so conceded, Mr. Leibowitz?"

1 "MR. LEIBOWITZ: Yes.

2 "MS. PIEL: Yes, your Honor."

3 MR. LEVIN-EPSTEIN: That to me, your Honor,
4 means operable.

5 THE COURT: If necessary I will read the whole
6 definition in addition to the concession.

7 MR. LEIBOWITZ: No, no, that is not necessary,
8 your Honor, I don't think -- it is just that operable
9 is not, is not synonymous with that whole definition,
10 it includes the ability to convert into --

11 THE COURT: Then I shall read the whole thing.

12 MR. LEIBOWITZ: I will withdraw the exception.

13 THE COURT: I will read it nevertheless.

14 You are absolutely right, it doesn't give the
15 whole thing.

16 MR. LEIBOWITZ: As you see fit, your Honor.

17 THE COURT: Go ahead.

18 (Continued next page.)
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1 MR. LEIBOWITZ: My next objection or exception
2 is to the entire charge as to possession and the
3 inferences and conclusions to be drawn from such
4 possession.

5 THE COURT: Do you agree that certain
6 inferences may be drawn from possession?

7 MR. LEVIN-EPSTEIN: Yes, I do believe that
8 certain inferences may be drawn from possession.

9 THE COURT: You tell me what and I will charge,
10 you tell me what inferences may be drawn from
11 possession, what do you say possession is, if you find
12 beyond a reasonable doubt they are knowingly possessing?

13 MR. LEIBOWITZ: One of my objections to that
14 charge is that your Honor dwelled on what can be
15 inferred from joint possession, and I think what the
16 jury did not get was that they had just as much
17 discretion to infer that there was no joint possession
18 and that there was no joint possession of their part.

19 THE COURT: You are not talking about
20 inferences, you are now talking about my definition of
21 possession.

22 MR. LEIBOWITZ: I am talking about the inferences
23 to be drawn from possession.

24 THE COURT: What do you say about possession.

25 MR. LEIBOWITZ: I am not sure that anything can

be done with the charge that has been given.

1 THE COURT: You must suggest a remedy, you can't
2 just object to the charge. If the Court inquires and
3 seeks your aid, Mr. Leibowitz, you should be ready to
4 give it.
5

6 MR. LEIBOWITZ: All right.

7 My first request, then, would be that the jury
8 understand and be told that first of all possession in
9 and of itself, even if possession were found, would be
10 irrelevant if the preceeding elements -- if the
11 required elements of the violation were not proven. I
12 think there may have been some confusion as to what
13 possession means standing by itself.

14 THE COURT: I don't find that at all, I decline
15 to charge.

16 Next.

17 MR. LEIBOWITZ: I would then request that
18 possession is not necessarily joint possession and --

19 THE COURT: Did I say --

20 MR. LEIBOWITZ: -- and the jury need not find
21 that joint possession merely by the fact that people
22 occupy the same residence.

23 THE COURT: I will charge that, I will even say
24 it is not necessarily joint because they are husband and
25 wife.

I meant to say something about that.

MR. LEIBOWITZ: They weren't husband and wife at that time, your Honor, I would not request that.

MR. LEVIN-EPSTEIN: If the Court intends to give Mr. Leibowitz's suggested charge that because two people --

THE COURT: Let me hear the whole thing, please.

MR. LEIBOWITZ: I object and except to the charge that residence is domicile.--

THE COURT: No, no, wait now, we haven't got through the inferences, I asked you what inferences you say may be drawn and what may not be drawn from the fact of possession. I thought that was your argument or that was your objection --

MR. LEIBOWITZ: Well --

THE COURT: -- what inferences?

MR. LEIBOWITZ: Right.

My objection is that under this set of facts no inference, no guilty inference can be drawn from possession.

THE COURT: No inference that he participated in the transportation into the state, no inference that he knew that it was transported from outside the state --

MR. LEIBOWITZ: Not under the facts of this case.

[817]

THE COURT: I want to go over them to make

sure.

No inference that he received the guns and no inference that when he received the guns he knew that they were transported from out the state into the state, you say none of those may be drawn?

MR. LEIBOWITZ: Not under the facts of this case.

THE COURT: All right.

Okay, next.

MR. LEIBOWITZ: All right.

I have stated the fact that I except to the definition of residence as domicile.

THE COURT: Yes. I may be wrong but I am satisfied that is what the statute means. I am willing to make it clear. I read the Jones charge and I wasn't even too happy about that. I want to make it clear on the record that that is what I believe, and if I am wrong --

MR. LEIBOWITZ: I take exception to your Honor's statement to the jury that the defendant Young's residence in California cannot legally accrue to the defendant Kenneth Chin's benefit under these charges.

THE COURT: Yes, that is clear on the record, too. I could be wrong there but I have got some aiding and abetting cases which I don't have at my fingertips but

1 which I have charged before.

2 MR. LEIBOWITZ: Those are my exceptions.

3 THE COURT: All right.

4 MR. LEVIN-EPSTEIN: Your Honor, may I be heard
5 as to one point.

6 THE COURT: Let us get them all then I will ask
7 you to respond.

8 MR. LEVIN-EPSTEIN: I thought that was all.

9 THE COURT: Now, Mrs. Piel, go ahead.

10 MS. PIEL: Your Honor, I wish to join in
11 Mr. Leibowitz' exceptions.

12 THE COURT: Yes, all right.

13 MS. PIEL: And I have an additional exception
14 with regard to possession.

15 THE COURT: Yes?

16 MS. PIEL: I believe your Honor said that you
17 would say something more about it and I think that you
18 should add to it in terms of an example that for
19 instance when two people are occupying the same premises
20 you may also infer that they have separate properties
21 such as their clothes, such as their belongings. You
22 mentioned something about eyeglasses, that just because
23 a pair of eyeglasses are found in an apartment does not
24 mean they belong to both people. An inference can
25 equally be made that the property belongs to an

1 individual rather than is jointly owned when it is
2 found in a premises which are jointly occupied by two
3 people.

4 THE COURT: I think my charge indicated that
5 because they live together that everything in the house
6 was jointly owned --

7 MS. PIEL: I think it was susceptible of that
8 interpretation since you made no mention of the fact
9 that people -- well, you went much further, you
10 developed the concept of joint ownership to a degree
11 that was much greater than any suggestion that there
12 could be separate ownership.

13 THE COURT: Anything else?

14 MS. PIEL: I thought that when you discussed
15 the disposition noticed and you said that a license,
16 a local license does not excuse a federal crime, and
17 whereas I believe that is a correct statement it
18 suggests that there was a federal crime, and it seems to
19 me that they have to first find out --

20 THE COURT: Do you want me to say -- well, is
21 there any question in your mind that I did not say that
22 I believe the crime was committed, do you think I took
23 that away from the jury.

24 MS. PIEL: Just at that moment it seemed to me

25 so.

1 THE COURT: All right, I will repeat the
2 statement.

3 MS. PIEL: That suggested that it was a federal
4 crime.

5 THE COURT: Good enough, I will repeat the
6 statement.

7 MS. PIEL: Now --

8 THE COURT: Wait now, let me note it.

9 Excuse me one moment, Ms. Piel.

10 MS. PIEL: Yes, your Honor.

11 THE COURT: Okay.

12 MS. PIEL: Incidentally, I thought of one
13 additional point with regard to the inferences which
14 can be drawn from the evidence of possession, there are
15 actually in evidence two disposition notices as to two
16 of the weapons which specifically state that two of
17 the guns belong to Mr. Chin, and there is at least one
18 purchase by Miss Young of the AR-180 which indicates
19 that it was her weapon, so it seems to me there is
20 tangible evidence in the record to indicate more than
21 the inference that might be drawn and contrary to the
22 inferences which could be drawn from joint possession.

23 THE COURT: It is possible but I disagree with
24 your premise. Ownership is or rather possession
25 usually follows or the right to return follows from

1 ownership, but, you know, ownership does not preclude
2 anyone else of possessing. I live in an apartment and
3 I would be horrified to think that my landlord had the
4 right to possess just because he owned the building.

5 What happens when you loan something to someone?

6 All right, at any rate I disagree with your
7 premise that because you show ownership that the other
8 party could not have possessed it.

9 With a gun, I can't conceive of anybody filing
10 a permit for a gun in the name of two people.

11 Is that usually done?

12 MR. LEVIN-EPSTEIN: I have no idea, your Honor,
13 from my experience --

14 THE COURT: Somebody has to decide that they
15 will make the application for the permit.

16 MS. PIEL: We are talking about inferences, we
17 are talking about an inference in a criminal case and
18 we are talking about the presumption of innocence,
19 which is another aspect of it, and it seems to me that
20 you are leading the jury in your instructions to a
21 direction pointing to the guilt with regard to the
22 inferences that can be drawn from possession.

23 THE COURT: Oh, definitely, I said they could,
24 they could draw an inference of guilt from possession.

25 Would you like to hear what Craven says about it,

1 it uses that very language.

2 I hope I remember it correctly.

3 It says it this way:

4 "Receipt under 18 United States Code Section
5 922(h)(1) may be shown circumstantially by proving
6 possession at least where no significant passage of
7 time has elapsed between the interstate transportation
8 and proof of possession."

9 (Continued next page.)
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[823]

1 MS. PIEL: Of course that doesn't discuss the
2 issue we were directing our attention to which has to
3 do with joint, the concept of joint possession.

4 THE COURT: But you said that I indicated that
5 from possession they infer guilt. I said it no less
6 pointedly than did Craven.

7 MS. PIEL: Your Honor, I don't wish to take up
8 the time of the Court further, I do wish to strongly
9 except to your definition or to your equation of
10 domicile and residence which --

11 THE COURT: I can understand that point and if
12 the defendant Young is convicted that shall have to be
13 argued in the Court of Appeals. I firmly believe that
14 is just what the Congress meant, I could be wrong.

15 MS. PIEL: I have nothing further.

16 MR. LEIBOWITZ: I overlooked one more exception.

17 May I state it at least, and that is in your
18 Honor's definition and charge on aiding and abetting
19 the fact that the Court excluded evidence of the fight,
20 the argument between Chin and Young, it seems to me,
21 would be prejudicial because the evidence is such an
22 argument goes to the question of whether Chin could have
23 been or would have been aiding and abetting Young.

24 THE COURT: All right, the exception is noted.

25 What do you want to say about all of this,

1 Mr. Levin-Epstein?

2 MR. LEVIN-EPSTEIN: Your Honor, if the Court
3 intends to acknowledge and accede to Mr. Leibowitz's
4 request that the jury be charged -- a request joined
5 by Mrs. Piel -- that the jury be charged that joint
6 possession not necessarily occurs when there are two
7 people living in an apartment and that there can be
8 property separately owned, and so on and so forth,
9 although I agree with the Court that the premise of
10 ownership is not necessarily mutually exclusive of the
11 premise of possession --

12 THE COURT: I don't intend to refer to the
13 various evidence of ownership.

14 MR. LEVIN-EPSTEIN: I'm not referring to an
15 exhibit, I merely asked the Court to charge the jury in
16 balance that if there is joint co-tenantship in a given
17 dwelling place then they have to find that the legal
18 permission of each of them to live in the place gives
19 them access legally and possession of the entire area
20 as it is block lettered out in the law of search and
21 seizure.

22 THE COURT: I think what Mrs. Piel asked is
23 she asked me to point to testimony of evidence of
24 separate ownership and you are asking me for joint
25 tenancy and I will not do either.

1 MR. LEVIN-EPSTEIN: I will make it more explicit,
2 I don't think either charge should be given, I think
3 the charge that you gave is satisfactory.

4 THE COURT: I think it is obvious, I think that
5 they understood it that way, I frankly don't see any
6 magic in the situation, the mere fact that people live
7 together doesn't mean that they jointly possess every-
8 thing in the apartment, and that is about the way I am
9 going to say it.

10 MR. LEVIN-EPSTEIN: I have no further suggestions
11 beyond what I have indicated.

12 THE COURT: This is not a bargain counter.

13 MR. LEVIN-EPSTEIN: I am not looking to bargain,
14 you asked me for an opinion, I gave it to you. When
15 you tell me no, that is the end of it.

16 THE COURT: All right.

17 See if they can come out, if they are finished.

18 We will wait a few moments.

19 (At 12:25 p.m. the jury took its place in the
20 jury box.)

21 THE COURT: I hope that I haven't disturbed your
22 lunch.

23 THE MARSHAL: They didn't start to eat yet.

24 THE COURT: You didn't start yet?

25 THE FOREMAN OF THE JURY: We were told not to.

[826]

1 THE COURT: I thought it was delivered to you.

2 All right.

3 There are a few other things I would like to
4 charge you on and what I say now should be put in
5 proper place in the charge, it is not meant to be the
6 most important part, it is just a supplement to what I
7 have already said.

8 Now I said something about it is the duty of the
9 lawyers to bring in the evidence, or I might have said
10 that, and I want you to understand that I do think that
11 in a criminal trial it is the duty of the lawyers to
12 develop the evidence, but you must understand of course
13 that the defendant has no obligation to offer any
14 evidence, and I did not intend to modify that charge in
15 any way or alter it. The defense has no burden of
16 proof, the burden of proof is squarely on the Government's
17 shoulders. That is the way it starts and it never shifts
18 and it remains throughout the trial.

19 Lawyers are notably bad mathematicians and I
20 as a lawyer made a terrible error, I said something
21 about 24 counts. There are counts and you probably
22 knew I was wrong there, there are only 12 counts, 8
23 against the defendant Chin and 4 against the defendant
24 Young, and I see you are all in full agreement.

25 I would like to read the stipulation that the

1 parties entered into. If you recall I called you back
2 into the courtroom when Mr. Simmons was about to testify,
3 I called you back and I said:

4 "In lieu of this witness's testimony the defendant
5 have conceded that all four objects on counsel table,
6 which are Exhibits numbered --

7 "MR. LEVIN-EPSTEIN: Three, four, five and
8 thirteen --

9 "-- of firearms within the meaning of the
10 statute and the statutory definition as it relates to
11 these exhibits is as follows:

12 "Firearm means any weapon including a starter
13 gun which will or is designed to or may readily be
14 converted to expel a projectile by the action of an
15 explosive.

16 "The defendants concede that these four exhibits
17 come within the statutory definition of firearms.

18 "Is that so conceded, Mr. Leibowitz?

19 "MR. LEIBOWITZ: Yes.

20 "MS. FIEL: Yes, your Honor."

21 Now I call your attention to my definition of
22 possession, and when I talk about joint possession of
23 course you understand that the mere fact that people
24 live together doesn't necessarily mean that they
25 jointly possess all the articles within the apartment.

1 Now I don't know what I said, I did say something
2 about obtaining a gun permit from the City of New York
3 and filing disposition slips with the City Firearms
4 Control Commission that that does not excuse a Federal
5 crime, and if I said that of course I didn't assume
6 that a Federal crime had been committed. I explained
7 to you whether or not a Federal crime was committed is
8 a matter solely within your determination. I have
9 nothing whatsoever to do with that. But since there is
10 evidence that the defendant or defendants applied for
11 gun permits and disposition slips were filed, I wanted
12 you to know that if you find that the Government proved
13 beyond a reasonable crime that a crime was committed
14 in violation of 922(a)(3), then the mere fact that the
15 accused who you find violated the Federal statute filed
16 an application and received a permit, that that does
17 not excuse that Federal crime, and that is all I intend
18 to say.

19 Now with that at this point is the lunch all
20 separated?

21 MEMBERS OF THE JURY: No, no.

22 THE COURT: It hasn't been brought in yet?

23 FOREMAN OF THE JURY: Brought in but we didn't
24 start. We were waiting for you to talk first.

25 THE COURT: There is a mechanical problem now,

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket

~~XXXX~~ No. : 76-1420

UNITED STATES OF AMERICA,

Appellee, ~~XXXX~~

against

AFFIDAVIT OF SERVICE
BY MAIL

KENNETH RAYMOND CHIN, and ELIZABETH JANE
YOUNG, now known as ELIZABETH JANE
YOUNG CHIN,

Defendants—

Appellants.

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

The undersigned being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at 101 West 80th St.,
New York, N.Y. 10024.

That on December 15, 19 76 deponent served the annexed
APPELLANTS' JOINT APPENDIX
on David G. Trager, U.S. Attorney Eastern District of N.Y.

attorney(x) for Appellee

in this action at 225 Cadman Plaza East, Brooklyn, N.Y. 11201

the address designated by said attorney(x) for that purpose by depositing a true copy of same enclosed
in a postpaid properly addressed wrapper, in—a post office—official depository under the exclusive care
and custody of the United States Postal Service within the State of New York.

Sworn to before me

this 15th day of December,

1976.

August DeFonse
The name signed must be printed beneath
AUGUST DE FONSE

George Cohen
GEORGE COHEN
Notary Public, State of New
No. 31-0862100
Qualified in New York County
Commission Expires March 30, 1977